

JOURNAL OF THE SENATE
OF THE
STATE OF VERMONT

ADJOURNED SESSION, 2010

VOLUME 1



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**THE 2010 SENATE JOURNAL IS
DEDICATED TO
DAVID A. GIBSON
SECRETARY OF THE SENATE**



**SECRETARY OF THE SENATE
2000-2010**

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Journal of the Senate of the STATE OF VERMONT ADJOURNED SESSION, 2010

TUESDAY, JANUARY 5, 2010

Pursuant to the provisions of the 2009 final adjournment joint resolution of the two Houses (J.R.S. 35), the Senate convened at the State House at Montpelier, on Tuesday, the fifth day of January, two thousand ten.

At ten o'clock in the forenoon, Eastern Standard Time, the Senate was called to order by the President, Lieutenant Governor Brian E. Dubie.

Devotional Exercises

Devotional exercises were conducted by the Reverend Michael Augustinowitz of Montpelier.

Pledge of Allegiance

Page Haddie Lary then led the members of the Senate in the pledge of allegiance.

Resignation of Senator After Final Adjournment

After final adjournment of the 2009 session, the following communication was received by the Secretary from the Honorable James H. Douglas, Governor of the State of Vermont, notifying the Senate of the resignation from the Senate, of Senator Hull Maynard which letter is as follows:

**Senator Hull Maynard
7983 Cold River Road
Shrewsbury, VT 05738**

November 6, 2009

Governor James Douglas
109 State Street
Montpelier, VT 05609-0101

Dear Jim:

After 13 years, seven elections, I have concluded that it is time to relinquish my office as state senator. Three months ago I hurtled past the age of 75. I took

stock of the situation and decided that I had some other priorities that needed attention.

My four grandchildren will all be on skis this winter, and I have missed special times because I come home more tired than my first years in this office. Weekends should be a time to keep up with the personal sides of our lives, and that is what I wish to do this winter.

I have enjoyed my standing committee work especially Government Operations, Education, Transportation and Agriculture. In addition I have enjoyed the appointments to the Governor's Veterans Council and the New England Board of Higher Education. If possible I would like to continue those and additionally your Rail Council.

I will always cherish the relationships with all the elected and support staff. I have the greatest admiration for the work and sacrifice you and your staff have put into the effort of making Vermont sustainable and affordable. I wish you, and Dorothy, the very best in your last year as our leader. Taffy and I will do all we can to move the mantle of leadership from your shoulders to those of Brian Dubie.

Respectfully yours,

/s/Hull P. Maynard, Jr.

Hull P. Maynard, Jr.

Message from the Governor

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

Mr. President:

I am directed by the Governor to deliver to the Senate a communication in writing.

Appointment Journalized

The President laid before the Senate the following communication from His Excellency, the Honorable James H. Douglas, Governor of the State of Vermont, relating to the appointment of a new Senator from the District of Rutland, which was ordered entered in the Journal, and is as follows:

“State of Vermont
Executive Department
Montpelier

December 14, 2009

David A. Gibson
Secretary of the Senate
115 State Street
Drawer 33
Montpelier, Vermont 05633-5501

Dear Mr. Secretary:

I have the honor to inform you that I have appointed

Margaret K. Flory, of Pittsford

to fill the seat left vacant by the resignation of Senator Hull P. Maynard, Jr. in Rutland District. This appointment is effective December 15, 2009.

Sincerely,

/s/ James H. Douglas

James H. Douglas
Governor”

Committee Appointed; Oath Administered; New Senator Seated

Thereupon, the President appointed Senator Mullin and Senator Carris as a committee of two to wait upon Senate-appointee, Margaret K. Flory, and to escort her to the bar of the Senate.

Thereupon, the Senate-appointee, Margaret K. Flory, was escorted to the bar of the Senate by Senator Mullin of Rutland District and Senator Carris of Rutland District, and took and subscribed the oath of office required by the Constitution from the Secretary of the Senate, David A. Gibson.

The new Senator then took her seat and assumed her legislative duties.

Bills Introduced

On motion of Senator Shumlin, the rules were suspended so that all Senate bills being introduced and read for the first time today be read by number only.

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

S. 147.

By Senator White,
An act relating to the size of accessory dwelling units.
To the Committee on Natural Resources and Energy.

S. 148.

By Senator Illuzzi,
An act relating to prohibiting distracted driving practices.
To the Committee on Transportation.

S. 149.

By Senator Sears,
An act relating to repealing the sunset of the law enforcement exemption to the security breach notice act.
To the Committee on Judiciary.

S. 150.

By Senator Sears,
An act relating to increasing the fine for illegally using parking reserved for disabled persons.
To the Committee on Transportation.

S. 151.

By Senators Sears and Brock,
An act relating to the use of wireless telephones and texting devices.
To the Committee on Transportation.

S. 152.

By Senator Sears,
An act relating to the fee for business directional signs.
To the Committee on Finance.

S. 153.

By Senator Sears,
An act relating to preventing conviction of innocent persons.
To the Committee on Judiciary.

S. 154.

By Senator Sears,

An act relating to repealing the sunset on criminal history record check fees.

To the Committee on Finance.

S. 155.

By Senator Illuzzi,

An act relating to permitting a judge to hold another judicial elective office.

To the Committee on Judiciary.

S. 156.

By Senator Illuzzi,

An act relating to renaming the access area on Big Salem Lake.

To the Committee on Institutions.

S. 157.

By Senators Miller, Carris and White,

An act relating to a study of lowering the drinking age.

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

S. 158.

By Senator Sears,

An act relating to marriage records.

To the Committee on Judiciary.

S. 159.

By Senator Cummings,

An act relating to custodial interrogations of minors.

To the Committee on Judiciary.

S. 160.

By Senator Sears,

An act relating to probable cause to administer an employee drug test.

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

S. 161.

By Senator Sears,
An act relating to National Crime Prevention and Privacy Compact.
To the Committee on Judiciary.

S. 162.

By Senator Sears,
An act relating to consensual sexual conduct between minors.
To the Committee on Judiciary.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 163.

By the Committee on Judiciary,
An act relating to technical corrections to 2009 sex offender legislation.

Bills Introduced

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

S. 164.

By Senators Miller, Sears, Illuzzi and Scott,
An act relating to sales and use tax.
To the Committee on Finance.

S. 165.

By Senator Campbell,
An act relating to eliminating the statute of limitations for felonies.
To the Committee on Judiciary.

S. 166.

By Senator Illuzzi,
An act relating to restitution in animal cruelty cases.
To the Committee on Judiciary.

S. 167.

By Senator Illuzzi,

An act relating to the award of moose permits.

To the Committee on Natural Resources and Energy.

S. 168.

By Senator Illuzzi,

An act relating to negligent use of a firearm.

To the Committee on Judiciary.

S. 169.

By Senator Campbell,

An act relating to uniform adult guardianship and protective proceedings jurisdiction.

To the Committee on Judiciary.

S. 170.

By Senator Illuzzi,

An act relating to local land use regulation and home occupations.

To the Committee on Natural Resources and Energy.

S. 171.

By Senator Mullin,

An act relating to nutritional labeling of food by chain restaurants.

To the Committee on Health and Welfare.

S. 172.

By Senator Illuzzi,

An act relating to the uniform common interest ownership act.

To the Committee on Judiciary.

S. 173.

By Senator Cummings,

An act relating to technical corrections to the trust laws.

To the Committee on Judiciary.

S. 174.

By Senator Illuzzi,

An act relating to authorizing chiropractors to prescribe drugs.

To the Committee on Health and Welfare.

S. 175.

By Senator Illuzzi,

An act relating to crimes against an unborn child.

To the Committee on Judiciary.

S. 176.

By Senators Kitchel and Bartlett,

An act relating to establishing a statewide prescription drug formulary.

To the Committee on Health and Welfare.

S. 177.

By Senators Kitchel and Bartlett,

An act relating to consolidation of health care administration.

To the Committee on Government Operations.

S. 178.

By Senator Carris,

An act relating to anatomical gift forms upon hospital admission.

To the Committee on Health and Welfare.

S. 179.

By Senator Carris,

An act relating to advance directive forms during hospital admission.

To the Committee on Health and Welfare.

S. 180.

By Senators Illuzzi, Kitchel, Shumlin and Starr,

An act relating to sale of the John H. Boylan state airport.

To the Committee on Institutions.

S. 181.

By Senator Bartlett,

An act relating to cost containment in hospitals.

To the Committee on Health and Welfare.

S. 182.

By Senator Sears,

An act relating to determining unemployment compensation experience rating for successor businesses.

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

S. 183.

By Senator Illuzzi,

An act relating to private activity bond authority.

To the Committee on Government Operations.

S. 184.

By Senator Illuzzi,

An act relating to election of the public service board.

To the Committee on Government Operations.

S. 185.

By Senators Brock and Carris,

An act relating to fraudulent government claims.

To the Committee on Judiciary.

S. 186.

By Senator Brock,

An act relating to requiring fiscal notes for all bills.

To the Committee on Rules.

S. 187.

By Senators Brock and Carris,

An act relating to municipal financial audits.

To the Committee on Government Operations.

S. 188.

By Senator Ashe,

An act relating to a postemployment restriction for commissioner of the department of public service.

To the Committee on Government Operations.

S. 189.

By Senator White,

An act relating to parental consent to mental health treatment of minors under age 14.

To the Committee on Judiciary.

S. 190.

By Senator Illuzzi,

An act relating to establishing a general permit for the certification of hydroelectric projects.

To the Committee on Natural Resources and Energy.

S. 191.

By Senator Carris,

An act relating to an initial block of free electric power.

To the Committee on Finance.

S. 192.

By Senator Nitka,

An act relating to property tax deferral for elderly residents.

To the Committee on Finance.

S. 193.

By Senator Starr,

An act relating to public prekindergarten education programs, existing service providers, and property tax rates.

To the Committee on Education.

S. 194.

By Senator Bartlett,

An act relating to property tax relief for disabled veterans.

To the Committee on Finance.

S. 195.

By Senator Carris,

An act relating to revenue and spending information.

To the Committee on Government Operations.

S. 196.

By Senator Racine,

An act relating to processing the application for motor vehicle emergency light permits.

To the Committee on Transportation.

S. 197.

By Senator Lyons,

An act relating to Vermont renewable energy property tax assessments and tax credit portability.

To the Committee on Finance.

S. 198.

By Senators Miller, Carris and Mullin,

An act relating to the Vermont Economic Development Board.

To the Committee on Government Operations.

S. 199.

By Senator Ayer,

An act relating to the licensure of electronic life safety and property protection systems.

To the Committee on Government Operations.

S. 200.

By Senator Ayer,

An act relating to privatizing the sale of spirituous liquors.

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

S. 201.

By Senator Ayer,

An act relating to recycled content in plastic packaging.

To the Committee on Natural Resources and Energy.

S. 202.

By Senator Ayer,

An act relating to the homestead declaration.

To the Committee on Finance.

S. 203.

By Senators Shumlin and Hartwell,

An act relating to sales and use tax on geothermal energy generators.

To the Committee on Finance.

S. 204.

By Senators Miller, Carris and Ashe,

An act relating to tax increment financing.

To the Committee on Finance.

S. 205.

By Senator Ayer,

An act relating to the Revised Uniform Anatomical Gift Act.

To the Committee on Health and Welfare.

S. 206.

By Senators Miller, Carris and Mullin,

An act relating to Vermont's entrepreneurial economy and job growth.

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

S. 207.

By Senators Choate and Kittell,
An act relating to handling of milk samples.
To the Committee on Agriculture.

S. 208.

By Senator Kittell,
An act relating to the Vermont agricultural advisory board.
To the Committee on Government Operations.

S. 209.

By Senator Lyons,
An act relating to prohibiting the first student day of the academic year to occur before Labor Day.
To the Committee on Education.

S. 210.

By Senator Carris,
An act relating to a defined contribution retirement plan for teachers.
To the Committee on Government Operations.

S. 211.

By Senator Lyons,
An act relating to unorganized towns' and gores' appraisers and tax collections.
To the Committee on Government Operations.

S. 212.

By Senator Lyons,
An act relating to child support for children with disabilities.
To the Committee on Judiciary.

S. 213.

By Senator Illuzzi,

An act relating to minimum wages for state contracts.

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

S. 214.

By Senator Lyons,

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.

To the Committee on Natural Resources and Energy.

S. 215.

By Senator McCormack,

An act relating to mandatory gratuities.

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

S. 216.

By Senator McCormack,

An act relating to credit card disclosures.

To the Committee on Finance.

S. 217.

By Senator Bartlett,

An act relating to a family caregiver exemption from jury duty.

To the Committee on Judiciary.

S. 218.

By Senator Ayer,

An act relating to voyeurism.

To the Committee on Judiciary.

S. 219.

By Senator Lyons,

An act relating to increasing renewable energy and energy efficiency projects in Vermont.

To the Committee on Natural Resources and Energy.

S. 220.

By Senator Illuzzi,

An act relating to reopening the canteen at the Vermont state hospital.

To the Committee on Health and Welfare.

S. 221.

By Senators Illuzzi, Snelling and Ayer,

An act relating to restrictions on nighttime operation of motor vehicles by junior operators and holders of learner's permits.

To the Committee on Transportation.

S. 222.

By Senators Miller, Snelling and Carris,

An act relating to recognition of Abenaki tribes.

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

S. 223.

By Senator Snelling,

An act relating to design, installation, and maintenance standards for electrically charged wire fences.

To the Committee on Agriculture.

S. 224.

By Senator Snelling,

An act relating to the establishment of a paint stewardship program.

To the Committee on Natural Resources and Energy.

S. 225.

By Senator Racine,

An act relating to the calculation of average daily membership in regional school choice agreements.

To the Committee on Education.

S. 226.

By Senators Miller, White and Shumlin,

An act relating to medical marijuana dispensaries.

To the Committee on Health and Welfare.

S. 227.

By Senator Nitka,

An act relating to uniform child custody jurisdiction and enforcement.

To the Committee on Judiciary.

S. 228.

By Senator Giard,

An act relating to prohibiting the use of neonicotinoid pesticides.

To the Committee on Agriculture.

S. 229.

By Senator Giard,

An act relating to mold insurance coverage.

To the Committee on Finance.

S. 230.

By Senator Giard,

An act relating to humane slaughter of livestock.

To the Committee on Agriculture.

S. 231.

By Senator Lyons,

An act relating to coordination and consistency in land use and energy planning and regulation and to portfolio and siting review of electric facilities.

To the Committee on Natural Resources and Energy.

S. 232.

By Senator Lyons,

An act relating to the collection and recycling of mercury-added lamps.

To the Committee on Natural Resources and Energy.

S. 233.

By Senator Lyons,

An act relating to the use of transfer of development rights for off-site mitigation of primary agricultural soils.

To the Committee on Natural Resources and Energy.

S. 234.

By Senator Lyons,

An act relating to the regulation of motor vehicle emissions.

To the Committee on Natural Resources and Energy.

S. 235.

By Senator Lyons,

An act relating to the water quality of state waters.

To the Committee on Agriculture.

S. 236.

By Senator Lyons,

An act relating to the water quality standards of Vermont.

To the Committee on Natural Resources and Energy.

S. 237.

By Senators Snelling and Lyons,

An act relating to operational standards for salvage yards.

To the Committee on Natural Resources and Energy.

S. 238.

By Senator Lyons,

An act relating to coordinating land use planning among various levels of government.

To the Committee on Natural Resources and Energy.

S. 239.

By Senator Lyons,

An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

To the Committee on Natural Resources and Energy.

S. 240.

By Senator Giard,

An act relating to providing a financial incentive to encourage early secondary school completion.

To the Committee on Education.

S. 241.

By Senator Giard,

An act relating to mediation and administrative due process hearings concerning the provision of special education services.

To the Committee on Education.

S. 242.

By Senator Giard,

An act relating to ensuring a free and appropriate education for a child with a severe disability whose needs are best met at home.

To the Committee on Education.

S. 243.

By Senator Giard,

An act relating to the creation of six regional centers to provide lifelong support to individuals with autism spectrum disorders and their families and to the creation of a Vermont council on autism spectrum disorders.

To the Committee on Government Operations.

S. 244.

By Senator Giard,

An act relating to creating a pilot regional center on autism spectrum disorders to serve Chittenden County.

To the Committee on Government Operations.

S. 245.

By Senator Illuzzi,

An act relating to a tri-state telecommunications compact commission.

To the Committee on Government Operations.

S. 246.

By Senator Lyons,

An act relating to proactive physical therapy and the Blueprint for Health.

To the Committee on Health and Welfare.

S. 247.

By Senator Lyons,

An act relating to bisphenol A.

To the Committee on Health and Welfare.

S. 248.

By Senators Lyons and Racine,

An act relating to social workers reporting animal cruelty.

To the Committee on Judiciary.

S. 249.

By Senator Lyons,

An act relating to health care career awareness and tax-free health care loan repayment.

To the Committee on Health and Welfare.

S. 250.

By Senator Hartwell,

An act relating to a uniform statewide format for corporate formations.

To the Committee on Finance.

S. 251.

By Senator Snelling,

An act relating to courier businesses.

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

S. 252.

By Senator Hartwell,

An act relating to creating regional school districts and no more than 16 supervisory unions.

To the Committee on Education.

S. 253.

By Senator Giard,

An act relating to promoting parental rights within the special education process.

To the Committee on Education.

S. 254.

By Senator Giard,

An act relating to educator licenses and professional development.

To the Committee on Education.

S. 255.

By Senators Snelling, Mazza and Miller,

An act relating to an amendment to the charter of the Chittenden County Transportation Authority.

To the Committee on Government Operations.

S. 256.

By Senators Miller and Carris,

An act relating to the taxation of capital gains, taxes on soft drinks, candy, and bottled water, and a groundwater withdrawal royalty.

To the Committee on Finance.

S. 257.

By Senators MacDonald and Racine,

An act relating to workers' compensation.

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

S. 258.

By Senator Starr,

An act relating to a moratorium on certificates of need for home health agencies.

To the Committee on Health and Welfare.

S. 259.

By Senator Starr,

An act relating to the tuition to be paid by a designating school district.

To the Committee on Education.

S. 260.

By Senator Brock,

An act relating to public access to criminal conviction records.

To the Committee on Judiciary.

S. 261.

By Senator McCormack,

An act relating to interference with or cruelty to a service animal.

To the Committee on Judiciary.

S. 262.

By Senators Carris and Campbell,

An act relating to insurance coverage for autism diagnosis and treatment.

To the Committee on Finance.

S. 263.

By Senators Shumlin and Miller,

An act relating to job creation and economic development.

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

S. 264.

By Senator Kittell,

An act relating to the Vermont dairy industry stabilization and health (DISH) program.

To the Committee on Agriculture.

S. 265.

By Senator Illuzzi,

An act relating to authorizing the fish and wildlife board to adopt a rule requiring hunters to wear blaze orange attire.

To the Committee on Natural Resources and Energy.

S. 266.

By Senators Illuzzi, Campbell, Carris and Shumlin,

An act relating to rights of workers' compensation claimants.

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

S. 267.

By Senator Lyons,

An act relating to home- and community-based health services for senior citizens.

To the Committee on Health and Welfare.

S. 268.

By Senator Ayer,

An act relating to the building bright futures council.

To the Committee on Government Operations.

S. 269.

By Senator Carris,

An act relating to studying the legalization and taxation of marijuana sales and use.

To the Committee on Judiciary.

S. 270.

By Senator White,

An act relating to state regulation of rent-to-own agreements for merchandise.

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

S. 271.

By Senators Kittell and Brock,

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles.

To the Committee on Judiciary.

S. 272.

By Senators Sears, Campbell and Mullin,

An act relating to human trafficking.

To the Committee on Judiciary.

S. 273.

By Senators Sears and Mullin,

An act relating to assault of a pregnant woman.

To the Committee on Judiciary.

S. 274.

By Senators White and Racine,

An act relating to the creation of the Vermont advisory commission on intergovernmental relations.

To the Committee on Government Operations.

Rules Suspended; Committee Relieved of Further Consideration; Bills Committed**H. 93.**

On motion of Senator Shumlin, the rules were suspended, and H. 93 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of House bill entitled:

An act relating to leasing state forestland for maple sugar production,
and the bill was committed to the Committee on Institutions.

H. 147.

On motion of Senators Shumlin, the rules were suspended, and H. 147 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of House bill entitled:

An act relating to the operation of a motor vehicle by junior operators and primary safety belt enforcement,

and the bill was committed to the Committee on Transportation.

H. 240.

On motion of Senator Shumlin, the rules were suspended, and H. 240 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of Senate bill entitled:

An act relating to no-net-loss of state hunting lands,

and the bill was committed to the Committee on Natural Resources and Energy.

H. 331.

On motion of Senator Shumlin, the rules were suspended, and H. 331 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of House bill entitled:

An act relating to technical changes to the records management authority of the Vermont State Archives and Records Administration,

and the bill was committed to the Committee on Government Operations.

H. 434.

On motion of Senator Shumlin, the rules were suspended, and H. 434 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of House bill entitled:

An act relating to agency of agriculture, food and markets revenues,
and the bill was committed to the Committee on Agriculture.

Message from the Governor
Appointments Referred

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

Bishop, Bethany of Montpelier - Commissioner of the Department of Economic Housing and Community Development, - from July 1, 2009, to February 28, 2011.

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

Brooks, Tayt of St. Albans - Commissioner of the Department of Economic, Housing and Community Development, - from October 5, 2009, to February 28, 2011.

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

Westman, Richard A. of Cambridge - Commissioner of the Department of Taxes, - from August 24, 2009, to February 28, 2011.

To the Committee on Finance.

Earle, Caroline of Barre - Commissioner of the Department of Human Resources, - from September 28, 2009, to February 28, 2011.

To the Committee on Government Operations.

Tucker, David of Northfield - Commissioner of the Department of Information and Innovation, - from November 9, 2009, to February 28, 2011.

To the Committee on Government Operations.

Johnson, Justin of Barre - Commissioner of the Department of Environmental Conservation, - from July 16, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Ide, Robert D. of Peacham - Commissioner of the Department of Motor Vehicles, - from August 16, 2009, to February 28, 2011.

To the Committee on Transportation.

Williams, Robert of Poultney - Member of the Electricians' Licensing Board, - from August 3, 2009, to June 30, 2012.

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

Larocque, Leo O. of Whiting - Member of the Electricians' Licensing Board, - from August 3, 2009, to June 20, 2012.

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

Lamberton, Wayne of Montpelier - Member of the Electricians' Licensing Board, - from August 3, 2009, to June 30, 2011.

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

Karnedy, Gary F. of South Burlington - Member of the State Labor Relations Board, - from August 10, 2009, to June 30, 2015.

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

Marvin, David of Hyde Park - Member of the Sustainable Jobs Fund Board of Directors, - from September 14, 2009, to August 31, 2014.

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

Quillen-Blume, Lenae of Hartland - Member of the Sustainable Jobs Fund Board of Directors, - from September 14, 2009, to August 31, 2014.

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

Williamson, Linda J. of Windsor - Member of the Board of Libraries, - from July 1, 2009, to June 30, 2013.

To the Committee on Education.

Morse, Stephan of Newfane - Member of the State Board of Education, - from September 3, 2009, to February 28, 2011.

To the Committee on Education.

Kelley, Robert of Brandon - Member of the State Board of Education, - from July 21, 2009, to June 30, 2011.

To the Committee on Education.

Murphy, Sandi of Enosburg Falls - Member of the Valuation Appeals Board, - from October 19, 2009, to January 31, 2012.

To the Committee on Finance.

Jefferson, Shirley of South Royalton - Member of the State Police Advisory Commission, - from August 24, 2009, to June 30, 2013.

To the Committee on Government Operations.

Stearns, Aimee of Morrisville - Member of the State Police Advisory Commission, - from August 24, 2009, to June 30, 2013.

To the Committee on Government Operations.

Williams, Laura of East Montpelier - Member of the State Police Advisory Commission, - from August 24, 2009, to June 30, 2013.

To the Committee on Government Operations.

Fournier, Sarah of Newport - Member of the Children and Family Council for Prevention Programs, - from September 21, 2009, to February 28, 2012.

To the Committee on Health and Welfare.

Dupuis, David of Putney - Member of the Children and Family Council for Prevention Programs, - from July 22, 2009, to February 28, 2012.

To the Committee on Health and Welfare.

Coakley, Kellie of Vergennes - Member of the Children and Family Council for Prevention Programs, - from July 22, 2009, to February 28, 2012.

To the Committee on Health and Welfare.

Josephson, Nan of Hubbardton - Member of the Children and Family Council for Prevention Programs, - from July 22, 2009, to February 28, 2012.

To the Committee on Health and Welfare.

Drew, Michael A., M.D. of Rutland - Member of the Board of Medical Practice, - from June 26, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Frank, Thomas E. of Essex - Member of the Public Oversight Commission, - from August 24, 2009, to February 28, 2012.

To the Committee on Health and Welfare.

MacDonald, Gregory J., M.D. of East Montpelier - Member of the Vermont Tobacco Evaluation and Review Board, - from July 1, 2009, to June 30, 2012.

To the Committee on Health and Welfare.

Shields, Bruce of Wolcott - Member of the Current Use Advisory Board, - from September 3, 2009, to January 31, 2012.

To the Committee on Natural Resources and Energy.

Dimitruk, Catherine of Colchester - Member of the Vermont Natural Gas and Oil Resources Board, - from June 15, 2009, to February 28, 2010.

To the Committee on Natural Resources and Energy.

Melville, Aaron of St. Johnsbury - Member of the Vermont Natural Gas and Oil Resources Board, - from October 16, 2009, to February 28, 2012.

To the Committee on Natural Resources and Energy.

Malter, John of Waterbury Center - Member of the Vermont Natural Gas and Oil Resources Board, - from May 27, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Smith, Harvey of New Haven - Member of the Vermont Natural Gas and Oil Resources Board, - from May 27, 2009, to February 28, 2012.

To the Committee on Natural Resources and Energy.

Olenick, Alice of Waitsfield - Member of the Natural Resources Board, Land Use Panel, - from February 1, 2010, to January 31, 2014.

To the Committee on Natural Resources and Energy.

Nicholls, John of Barre - Member of the Natural Resources Board, Water Resources Panel, - from February 1, 2010, to January 31, 2014.

To the Committee on Natural Resources and Energy.

Kreisel, Peter of Colchester - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future, - from May 4, 2009, to February 28, 2012.

To the Committee on Natural Resources and Energy.

Peterson, Jan E. of Essex Junction - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future, - from May 4, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Joint Resolutions 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 Shumlin,

J.R.S. 36. Joint resolution to provide for a Joint Assembly to receive the State-of-the-State message from the Governor.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, January 7, 2010, at two o'clock in the afternoon to receive the State-of-the-State message from the Governor.

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

By Senator Shumlin,

J.R.S. 37. Joint resolution relating to Town Meeting adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 26, 2010, or Saturday, February 27, 2010, it be to meet again no later than Tuesday, March 9, 2010.

Joint Resolution Referred**J.R.S. 38.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Ayer, Giard and Shumlin,

J.R.S. 38. Joint resolution strongly supporting the expenditure of a maximum of \$1 million from Vermont's 2010 American Recovery and Reinvestment Act allocation to assist Addison County businesses and nonprofit institutions that have sustained severe economic losses due to the closure of the Lake Champlain bridge at Crown Point.

Whereas, in 1929, the governors of New York and Vermont dedicated the Lake Champlain bridge which crosses Lake Champlain with a roadway linking Chimney Point, Vermont and Crown Point, New York, and

Whereas, for eight decades, the Lake Champlain bridge served as an essential transportation thoroughfare and economic engine for residents and businesses in both states, enabling thousands of persons to travel to their jobs

and avail themselves of vital services, including health care, in an efficient and timely manner, and

Whereas, in recent years, 3,500 cars traveled cross the bridge on a typical day, and

Whereas, on Friday, October 16, 2009, the New York Department of Transportation closed the bridge to all traffic due to its severe deterioration and the department's fears for the public's safety, and

Whereas, the immediate economic impact on individuals and local communities has been close to catastrophic, and within days of the bridge's closing, Vermont Secretary of Transportation David Dill declared an emergency, and

Whereas, although emergency interim measures, including the continuation of the Ticonderoga ferry service beyond its normal seasonal closing date and the initiation of a pedestrian ferry between the Basin Harbor Club in Vergennes and Westport, New York, have slightly eased the new burdens forced on area businesses, the hardships that their employees have suffered, including inordinately long 100-mile commutes or, alternatively, five-day weekly separations of families, remain, and

Whereas, businesses close to the bridge have been severely hampered, if not crippled, and other businesses and nonprofit institutions, located further from the water's edge, have also experienced major negative economic consequences, and

Whereas, although a new ferry located close to the now demolished bridge's site is planned, the construction of a permanent replacement span will require many months, if not years, and in the meantime, economic relief is essential for Vermont businesses and nonprofit organizations that have been so seriously harmed, and

Whereas, in a joint press conference held on December 1, 2009, House Speaker Shap Smith and Senate Pro Tempore Peter Shumlin proposed that a maximum of \$1 million from Vermont's 2010 American Recovery and Reinvestment Act allocation be directed to assist Addison County businesses and nonprofit institutions that have sustained economic losses due to the closure of the Lake Champlain bridge at Crown Point, and

Whereas, Governor James Douglas has offered a similar proposal, and

Whereas, within the week, the state of Vermont must submit an application to the federal government for release of the state's 2010 federal monetary allocation from the American Recovery and Reinvestment Act, and it is

important that a written expression of the General Assembly's support for this expenditure accompany that application, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly strongly supports the expenditure of a maximum of \$1 million from Vermont's 2010 American Recovery and Reinvestment Act allocation to assist Addison County businesses and nonprofit institutions that have sustained economic losses due to the closure of the Lake Champlain bridge at Crown Point, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont office of stimulus and economic recovery for submission as part of the upcoming application for federal stimulus funding to Governor James Douglas and to the Vermont Congressional Delegation.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Appropriations.

Senate Resolution Adopted

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

By the Committee on Rules,

S.R. 16. Senate resolution relating to meeting dates of the Senate.

Resolved by the Senate:

That for the adjourned session of the 2009 biennium, beginning with the week of January 5 and extending through the end of the biennial session, Rule 7 of the Permanent Rules of the Senate 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 eight 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.

Consideration Postponed

Senate bill entitled:

S. 99.

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Consideration Resumed; Third Reading Ordered

J.R.H. 15.

Consideration was resumed on Joint House resolution entitled:

Joint resolution relating to the designation of commemorative observances in concurrent resolutions.

Thereupon, the pending question, Shall the joint resolution be read the third time?, was decided in the affirmative.

Standing Committees Realigned (after 2009 adjournment)

The President, on behalf of the Committee on Committees, and as a result of the resignation of Senator Maynard and subsequent replacement by Senator Flory, reported realignments and new appointments for four of the standing committees, as follows:

Education

P.M.	Senator Starr, Chair	Room 28
	Doyle, Vice-Chair	
	<i>Flory</i>	
	[Giard]	
	Nitka, Clerk	
	Brock	

Finance

P.M.	Senator Cummings, Chair	Room 6
	Ayer, Vice-Chair	
	<i>Giard</i>	
	MacDonald, Clerk	
	[Maynard]	
	McCormack	
	Carris	
	Hartwell	

Natural Resources and Energy

A.M.	Senator Lyons, Chair	Room 8
	MacDonald, Vice-Chair	
	<i>Flory</i>	
	Snelling	
	McCormack	
	[Hartwell, Clerk]	

Transportation

A.M. Senator Mazza, Chair Room 3
 Scott, Vice-Chair
 [Maynard]
 Shumlin
 Kitchel, Clerk
 Hartwell

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o'clock and fifty minutes in the forenoon on Thursday, January 7, 2010.

THURSDAY, JANUARY 7, 2010

The Senate was called to order by the President.

Joint Assembly

At two o'clock in the afternoon, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 36. Joint resolution to provide for a Joint Assembly to receive the State-of-the-State message from the Governor.

The Senate repaired to the hall of the House.

Having returned therefrom, at two o'clock and fifty-five minutes in the afternoon, the President resumed the Chair.

Message from the House No. 1

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. 36. Joint resolution to provide for a Joint Assembly to receive the State-of-State message from the Governor.

And has adopted the same in concurrence.

Message from the House No. 2

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. 37. Joint resolution relating to Town Meeting adjournment.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the morning.

FRIDAY, JANUARY 8, 2010

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the time for convening of the Senate having been set at 8:30 A.M., the Senate was called to order by David A. Gibson, Secretary of the Senate.

Devotional Exercises

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

Presiding Officer Elected

Thereupon, pursuant to the provisions of Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the Senate proceeded to the election of an acting President *pro tempore* to preside.

Nominations being in order, Senator Ayer nominated Senator Richard T. Mazza to be acting President *pro tempore*.

There being no further nominations, the Secretary declared that the nominations were closed, and the Assistant Secretary was instructed to cast one ballot for Senator Richard T. Mazza to serve as presiding officer until the return of the President or the President *pro tempore*.

Senator Mazza Assumes the Chair

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 275.

By Senator Illuzzi,

An act relating to calculating normal retirement allowances.

To the Committee on Government Operations.

Joint Resolutions 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 Shumlin,

J.R.S. 39. 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 19, 2010, at two o'clock in the afternoon to receive the budget message of the Governor.

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

By Senator Shumlin,

J.R.S. 40. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, January 8, 2010, it be to meet again no later than Tuesday, January 12, 2010.

Consideration Postponed

Senate bill entitled:

S. 99.

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Joint Resolution Adopted in Concurrence**J.R.H. 15.**

Joint House resolution of the following title was read the third time and adopted in concurrence:

Joint resolution relating to the designation of commemorative observances in concurrent resolutions.

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, January 12, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 40.

TUESDAY, JANUARY 12, 2010

The Senate was called to order by the President *pro tempore*.

Pledge of Allegiance

Pages Nell Sather and Erin Turner then led the members of the Senate in the pledge of allegiance.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed**S. 173.**

On motion of Senator Cummings, the rules were suspended, and S. 173 was taken up for immediate consideration, for the purpose of relieving the Committee on Judiciary from further consideration of the bill. Thereupon, on motion of Senator Cummings, the Committee on Judiciary was relieved of Senate bill entitled:

An act relating to technical corrections to the trust laws,
and the bill was committed to the Committee on Finance.

Joint 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 Shumlin,

J.R.S. 41. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, January 15, 2010, it be to meet again no later than Tuesday, January 19, 2010.

Consideration Postponed

Senate bill entitled:

S. 99.

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Third Reading Ordered

S. 163.

Senate committee bill entitled:

An act relating to technical corrections to 2009 sex offender legislation.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator Campbell, on behalf of the Committee on Judiciary, moved to amend the bill by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. Sec. 11 of No. 58 of the Acts of 2009 is amended to read:

Sec. 11. APPLICABILITY

Secs. 6, 9, and 14 of this act (sex offender registry and Internet sex offender registry) shall apply only to the following persons:

(1) A person convicted prior to the effective date of this act who is under the supervision of the department of corrections except as provided in subdivision (3)(A) of this section.

(2) A person convicted on or after the effective date of this act.

(3)(A) A person convicted prior to the effective date of this act of a crime committed in this state, who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13; or a person convicted prior to the effective date of this act of lewd or lascivious conduct with a child in violation of 13 V.S.A. § 2602 or a second or subsequent conviction for

voyeurism in violation of 13 V.S.A. § 2605(b) or (c), who is under the supervision of the department of corrections, unless the sex offender review committee determines pursuant to the requirements of this subdivision (3), taking into account whether the person has been charged or convicted of a criminal offense or a probation or parole violation since being placed on the registry, that the person has successfully re-integrated into the community.

(B)(i) No person's name shall be posted electronically pursuant to subdivision (3)(A) of this section before October 1, 2009.

(ii) On or before July 1, 2009, the department of public safety shall provide notice of the right to petition under this subdivision (3)(B) to all persons convicted prior to the effective date of this act who are not under the supervision of the department of corrections and are subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13.

(iii) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (3)(A) of this section shall file a petition with the committee before October 1, 2009. If a petition is filed before October 1, 2009, the petitioner's name shall not be posted electronically pursuant to subdivision (3)(A) of this section until after the sex offender review committee has ruled on the petition.

(C) All decisions made by the sex offender review committee under subdivision (3)(A) of this section shall be reviewed and approved by the commissioner of the department of corrections. The agency of human services shall adopt emergency rules which establish criteria for the commissioner's decision.

(4)(A) A person convicted prior to July 1, 2009, of a crime committed in any jurisdiction of the United States other than Vermont, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13, unless the sex offender review committee determines pursuant to the requirements of this subdivision (4), taking into account whether the person has been charged or convicted of a criminal offense or a probation or parole violation since being placed on the registry, that the person has successfully re-integrated into the community.

(B)(i) No person's name shall be posted electronically pursuant to subdivision (4)(A) of this section before July 1, 2010.

(ii) On or before April 1, 2010, the department of public safety shall provide notice of the right to petition pursuant to this subdivision (4)(B)

to all persons with a right to file a petition under subdivision (4)(A) of this section.

(iii) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (4)(A) of this section shall file a petition with the committee before July 1, 2010. If a petition is filed before July 1, 2010, the petitioner's name shall not be posted electronically pursuant to subdivision (4)(A) of this section until after the sex offender review committee has ruled on the petition.

(iv) The petition shall be accompanied by available information regarding the nature and circumstances of the offense and sentence from the jurisdiction where the offense occurred. The committee may deny the petition if sufficient available information regarding the nature and circumstances of the offense and sentence are not provided within 90 days after the committee requests the information from the petitioner.

(C) All decisions made by the sex offender review committee under subdivision (4)(A) of this section shall be reviewed and approved by the commissioner of the department of corrections. The agency of human services shall adopt emergency rules which establish criteria for the commissioner's decision.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Appointment Confirmed

The following Gubernatorial appointment was confirmed separately by the Senate, upon full report given by the Committee to which it was referred:

Ide, Robert D. of Peacham - Commissioner of the Department of Motor Vehicles, - from August 16, 2009, to February 28, 2011.

Recess

On motion of Senator Mazza the Senate recessed until 2:00 P.M.

Called to Order

At 2:00 P.M. the Senate was called to order by the President.

Message from the House No. 3

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 resolutions originating in the Senate of the following titles:

J.R.S. 39. Joint resolution to provide for a Joint Assembly to hear the budget message of the Governor.

J.R.S. 40. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

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 a bill originating in the Senate of the following title:

S. 93. An act relating to commercial 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.

Bills Introduced

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

S. 276.

By Senator Bartlett,

An act relating to operating in the presence of draft animals and livestock.

To the Committee on Transportation.

S. 277.

By Senators Illuzzi, Shumlin and Starr,

An act relating to raising weight limits on interstate highways pursuant to federal legislation.

To the Committee on Transportation.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

S. 208.

On motion of Senator White, the rules were suspended, and S. 208 was taken up for immediate consideration, for the purpose of relieving the Committee on Government Operations from further consideration of the bill. Thereupon, on motion of Senator White, the Committee on Government Operations was relieved of Senate bill entitled:

An act relating to the Vermont agricultural advisory board,
and the bill was committed to the Committee on Agriculture.

Rules Suspended; House Proposal of Amendment Concurred In; Rules Suspended; Bill Delivered

S. 93.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and House proposal of amendment to Senate bill entitled:

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

Was taken up for immediate consideration.

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

Sec. 1. 23 V.S.A. § 1391(c) is amended to read:

(c) ~~On those highways designated as the national system of~~ Unless authorized by federal law, on interstate and defense ~~highways~~ highway 189, no single axle load shall be in excess of 20,000 pounds with no tolerance allowed, nor shall any tandem axle load be in excess of 34,000 pounds, with no tolerance allowed, except in the case of vehicles owned by persons to whom special permits have been issued in accordance with section 1400 of this title.

Sec. 2. 23 V.S.A. § 1392 is amended to read:

§ 1392. GROSS LIMITS ON HIGHWAYS

Except as provided in section 1400 of this title, a person or corporation shall not operate or cause to be operated a motor vehicle in excess of the total weight, including vehicle, object, or contrivance and load, of:

* * *

(11) ~~Subdivisions~~ Unless authorized by federal law, subdivisions (5) and (6) of this section shall not apply to the highways designated as portions of the national system of interstate and defense highways highway 189.

* * *

(13) Despite the axle-load provisions of section 1391 of this title and the maximum gross load of subdivision (4) of this section, a special annual permit, which shall expire coincidentally with the vehicle's registration, except for vehicles not registered in Vermont in which case the permit shall become void on January 1 following date of issue, may be issued to a person or corporation ~~transporting unprocessed forest products~~ operating on designated routes on the state highway system and on those highways designated as the national system of interstate and defense highways for a fee of \$310.00 for each vehicle which must be registered for a weight of 80,000 pounds. ~~"Unprocessed forest products" includes whole trees, parts thereof, logs, wood chips, sawdust, shavings, and bark mulch.~~ This special permit shall be issued only for a combination of vehicle and semi-trailer or trailer equipped with five or more axles, with a distance between axles which meets the minimum requirements of registering the vehicle to 80,000 pounds as allowed under subdivision (4) of this section. The maximum gross load under this special permit shall be 90,000 pounds. ~~The~~ Unless authorized by federal law, the provision of this subdivision shall not apply to operation on ~~the~~ interstate and defense highway system 189.

* * *

(16) Notwithstanding any other provision of law, a five or more axle truck tractor, semi-trailer combination, or truck trailer combination, when the load consists solely of unprocessed milk products as defined in subdivision 4(55) of this title, may be registered for and operated with a maximum gross weight of 90,000 pounds on state highways, without permit, and upon posted state and town highways and on those highways designated as the national system of interstate and defense highways when the vehicle has been issued a permit in compliance with the provisions of section 1400 of this title; however:

(A) Vehicles registered pursuant to this subdivision (16) ~~of this section~~ shall be subject to the same axle spacing restrictions as are applied to five or more axle vehicles registered to 80,000 pounds as set forth in subdivision (4) of this section;

(B) The following shall also apply to vehicles registered pursuant to this subdivision (16);

* * *

(vii) no tolerance shall be allowed on the gross weight of any vehicle registered under the provisions of this subdivision, nor shall the axle tolerance permitted in subdivisions (i) and (ii) of this subdivision apply when the vehicle is being operated upon posted state or town highways pursuant to the provisions of section 1400 of this title. On ~~those highways designated as the national system of~~ interstate and defense highways highway 189, the provisions of subsection 1391(c) of this title shall apply.

* * *

(17) Notwithstanding the gross vehicle weight provisions of subdivision (4) of this section, a truck trailer combination or truck tractor, semi-trailer combination with six or more ~~load-bearing~~ load-bearing axles ~~and specially equipped for hauling unprocessed milk, unprocessed forest or unprocessed quarry products~~ shall be allowed to bear a maximum of 99,000 pounds by special annual permit, which shall expire coincidentally with the vehicle's registration, except for vehicles not registered in Vermont in which case the permit shall become void on January 1 following the date of issue, for operating on designated routes on the state and town highways and on those highways designated as the national system of interstate and defense highways, subject to the following:

* * *

(E) ~~The~~ Unless authorized by federal law, the provisions of this subdivision shall not apply to operation on ~~the~~ interstate and defense highway ~~system~~ 189.

(F) The fee for the annual permit as provided in this subdivision shall be \$310.00 for vehicles bearing up to 90,000 pounds and \$500.00 for vehicles bearing up to 99,000 pounds.

(G) ~~For the purposes of this subdivision, the following definitions shall apply:~~

~~(i) unprocessed milk products as defined in subdivision 4(55) of this title;~~

~~(ii) unprocessed forest products as defined in subdivision 1392(13) of this title;~~

~~(iii) unprocessed quarry products shall be quarried rock in block or blocks as it would be removed from the quarry. [Repealed.]~~

* * *

(20) ~~Notwithstanding the gross vehicle weight provisions of subdivision (4) of this section, a truck trailer combination or truck tractor, semi-trailer~~

~~combination with six or more load bearing axles shall be allowed to bear a maximum of 90,000 pounds by special annual permit, which shall expire coincidentally with the vehicle's registration, except for vehicles not registered in Vermont in which case the permit shall become void on January 1 following the date of issue, for operating on designated routes on the state and town highways, subject to the following:~~

~~(A) The combination of vehicles must have as a minimum, a distance of 51 feet between extreme axles.~~

~~(B) The following shall also apply to vehicles registered pursuant to this subdivision:~~

~~(i) no single axle load shall be in excess of 22,400 pounds except that a 10 percent tolerance shall be allowed on each single axle;~~

~~(ii) no tandem axle load shall be in excess of 36,000 pounds except that a 10 percent tolerance shall be allowed on each tandem axle;~~

~~(iii) no single axle of a tandem axle unit shall support more than 60 percent of the total weight supported by the tandem unit;~~

~~(iv) no tri axle group, as defined in subdivision (6)(D) of this section, shall support a gross weight in excess of 46,000 pounds; except that a 10 percent tolerance shall be allowed on each tri axle group;~~

~~(v) no single axle of a tri axle group shall support more than 40 percent of the total weight supported by the tri axle group;~~

~~(vi) the maximum load on any axle of the vehicle shall not exceed more than 600 pounds per inch of tire width computed in conformity with the manufacturer's designated width;~~

~~(vii) a tolerance of 1,000 pounds shall be allowed on gross weight for any vehicle permitted under this subdivision.~~

~~(C) The fine for any violation of this subdivision shall be the same as provided in section 1391a of this title.~~

~~(D) The weight permitted by this subdivision shall be allowed for foreign trucks which are registered or permitted for 90,000 pounds in a state or province which recognizes Vermont vehicles for weights consistent with this subdivision.~~

~~(E) The provisions of this subdivision shall not apply to operation on the interstate and defense highway system.~~

~~(F) The fee for the annual permit as provided in this subdivision shall be \$310.00. [Repealed.]~~

* * *

Sec. 3. 23 V.S.A. § 1391(c) is amended to read:

(c) ~~Unless authorized by federal law, on~~ On those highways designated as the national system of interstate and defense highway 189 highways, no single axle load shall be in excess of 20,000 pounds with no tolerance allowed, nor shall any tandem axle load be in excess of 34,000 pounds, with no tolerance allowed, except in the case of vehicles owned by persons to whom special permits have been issued in accordance with section 1400 of this title.

Sec. 4. 23 V.S.A. § 1392 is amended to read:

§ 1392. GROSS LIMITS ON HIGHWAYS

Except as provided in section 1400 of this title, a person or corporation shall not operate or cause to be operated a motor vehicle in excess of the total weight, including vehicle, object, or contrivance and load, of:

* * *

(11) ~~Unless authorized by federal law, subdivisions~~ Subdivisions (5) and (6) of this section shall not apply to the highways designated as portions of the national system of interstate and defense highway 189 highways.

* * *

(13) Despite the axle-load provisions of section 1391 of this title and the maximum gross load of subdivision (4) of this section, a special annual permit, which shall expire coincidentally with the vehicle's registration, except for vehicles not registered in Vermont in which case the permit shall become void on January 1 following date of issue, may be issued to a person or corporation operating on designated routes on the state highway system ~~and on those highways designated as the national system of interstate and defense highways~~ for a fee of \$310.00 for each vehicle which must be registered for a weight of 80,000 pounds. This special permit shall be issued only for a combination of vehicle and semi-trailer or trailer equipped with five or more axles, with a distance between axles which meets the minimum requirements of registering the vehicle to 80,000 pounds as allowed under subdivision (4) of this section. The maximum gross load under this special permit shall be 90,000 pounds. ~~Unless authorized by federal law, the~~ The provision of this subdivision shall not apply to operation on the interstate and defense highway 189 system.

* * *

(16) Notwithstanding any other provision of law, a five or more axle truck tractor, semi-trailer combination, or truck trailer combination, when the load consists solely of unprocessed milk products as defined in subdivision

4(55) of this title, may be registered for and operated with a maximum gross weight of 90,000 pounds on state highways, without permit, and upon posted state and town highways and on those highways designated as the national system of interstate and defense highways when the vehicle has been issued a permit in compliance with the provisions of section 1400 of this title; however:

* * *

(vii) no tolerance shall be allowed on the gross weight of any vehicle registered under the provisions of this subdivision, nor shall the axle tolerance permitted in subdivisions (i) and (ii) of this subdivision apply when the vehicle is being operated upon posted state or town highways pursuant to the provisions of section 1400 of this title. On those highways designated as the national system of interstate and defense highway 189 highways, the provisions of subsection 1391(c) of this title shall apply.

* * *

(17) Notwithstanding the gross vehicle weight provisions of subdivision (4) of this section, a truck trailer combination or truck tractor, semi-trailer combination with six or more load-bearing axles shall be allowed to bear a maximum of 99,000 pounds by special annual permit, which shall expire coincidentally with the vehicle's registration, except for vehicles not registered in Vermont in which case the permit shall become void on January 1 following the date of issue, for operating on designated routes on the state and town highways ~~and on those highways designated as the national system of interstate and defense highways~~, subject to the following:

* * *

(E) ~~Unless authorized by federal law, the~~ The provisions of this subdivision shall not apply to operation on the interstate and defense highway ~~189 system~~.

* * *

Sec. 5. EFFECTIVE DATES

(a) This section and Secs. 1 and 2 of this act shall take effect on passage.

(b) Secs. 3 and 4 of this act shall take effect if, and on the day when, the pilot program created by 23 U.S.C. section 127(a)(13) is terminated.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was ordered delivered to the Governor forthwith.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, January 15, 2010.

FRIDAY, JANUARY 15, 2010

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. 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. 181. House concurrent resolution congratulating Pownal on the 250th anniversary of its municipal charter.

H.C.R. 182. House concurrent resolution honoring Jeffrey R. Cueto for his outstanding public service as chief hydrologist at the agency of natural resources.

H.C.R. 183. House concurrent resolution congratulating the 2009 Colchester High School Lakers Division II championship football team.

H.C.R. 184. House concurrent resolution honoring the public service of Vermont National Guard members being deployed in Operation Phoenix.

H.C.R. 185. House concurrent resolution congratulating the 2009 Hartford High School Hurricanes Division I championship field hockey team.

H.C.R. 186. House concurrent resolution honoring the Hartford High School digital architectural history project.

H.C.R. 187. House concurrent resolution congratulating the Hartford Hurricanes 2009 Division I championship baseball team.

H.C.R. 188. House concurrent resolution congratulating Cathleen Newton on being named the 2009 Vermont winner of the Presidential Award for Excellence in Mathematics and Science Teaching.

H.C.R. 189. House concurrent resolution extending joyful 100th-birthday wishes to Edith (Cameron) Mikkelsen of Williamstown.

H.C.R. 190. House concurrent resolution in memory of Representative Henry Ira Trombley.

H.C.R. 191. House concurrent resolution congratulating the Milton High School Yellow Jackets 2009 Division II championship girls' soccer team.

H.C.R. 192. House concurrent resolution honoring Milton High School soccer coach Stephanie Hurley.

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

The House has considered concurrent resolutions originating in the Senate of the following titles:

S.C.R. 32. Senate concurrent resolution congratulating the citizens of Marshfield on the successful restoration and rededication of the Martin Covered Bridge.

S.C.R. 33. Senate concurrent resolution commemorating a century of outstanding community-based volunteer firefighting service in the town of Marshfield.

S.C.R. 34. Senate concurrent resolution congratulating Lumbermens Merchandising Corporation on its 75th anniversary.

And has adopted the same in concurrence.

Message from the House No. 6

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. 477. An act relating to reauthorizing the Lake Champlain reciprocal fishing license.

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. 41. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Bill Referred

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

H. 477.

An act relating to reauthorizing the Lake Champlain reciprocal fishing license.

To the Committee on Natural Resources and Energy.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed**S. 154.**

On motion of Senator Sears, the rules were suspended, and S. 154 was taken up for immediate consideration, for the purpose of relieving the Committee on Finance from further consideration of the bill. Thereupon, on motion of Senator Sears, the Committee on Finance was relieved of Senate bill entitled:

An act relating to repealing the sunset on criminal history record check fees, and the bill was committed to the Committee on Judiciary.

Senate Concurrent Resolutions

The following joint concurrent resolutions, 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, are hereby adopted on the part of the Senate:

By Senators Doyle, Cummings and Scott,

By Representative Ancel,

S.C.R. 32.

Senate concurrent resolution congratulating the citizens of Marshfield on the successful restoration and rededication of the Martin Covered Bridge.

By Senators Doyle, Cummings and Scott,

By Representative Ancel,

S.C.R. 33.

Senate concurrent resolution commemorating a century of outstanding community-based volunteer firefighting service in the town of Marshfield.

By Senators Sears and Hartwell,

By Representative Wilson,

S.C.R. 34.

Senate concurrent resolution congratulating Lumbermens Merchandising Corporation on its 75th anniversary.

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By Representative Botzow,

By Senators Hartwell and Sears,

H.C.R. 181.

House concurrent resolution congratulating Pownal on the 250th anniversary of its municipal charter.

By Representative Deen,

By Senator Lyons,

H.C.R. 182.

House concurrent resolution honoring Jeffrey R. Cueto for his outstanding public service as chief hydrologist at the agency of natural resources.

By Representative Brennan and others,

By Senator Mazza,

H.C.R. 183.

House concurrent resolution congratulating the 2009 Colchester High School Lakers Division II championship football team.

By Representative Acinapura and others,

H.C.R. 184.

House concurrent resolution honoring the public service of Vermont National Guard members being deployed in Operation Phoenix.

By Representative Bohi and others,
By Senators Campbell, McCormack and Nitka,

H.C.R. 185.

House concurrent resolution congratulating the 2009 Hartford High School Hurricanes Division I championship field hockey team.

By Representative Bohi and others,
By Senators Campbell, McCormack and Nitka,

H.C.R. 186.

House concurrent resolution honoring the Hartford High School digital architectural history project.

By Representative Bohi and others,
By Senators Campbell, McCormack and Nitka,

H.C.R. 187.

House concurrent resolution congratulating the Hartford Hurricanes 2009 Division I championship baseball team.

By Representative Bohi and others,
By Senators Campbell, McCormack and Nitka,

H.C.R. 188.

House concurrent resolution congratulating Cathleen Newton on being named the 2009 Vermont winner of the Presidential Award for Excellence in Mathematics and Science Teaching.

By Representatives Koch and Winters,
By Senators Cummings, Doyle and Scott,

H.C.R. 189.

House concurrent resolution extending joyful 100th-birthday wishes to Edith (Cameron) Mikkelsen of Williamstown.

By Representative Acinapura and others,
By All Members of the Senate,

H.C.R. 190.

House concurrent resolution in memory of Representative Henry Ira Trombley.

By Representative Turner and others,

H.C.R. 191.

House concurrent resolution congratulating the Milton High School Yellow Jackets 2009 Division II championship girls' soccer team.

By Representative Turner and others,

H.C.R. 192.

House concurrent resolution honoring Milton High School soccer coach Stephanie Hurley.

Message from the Governor

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

Mr. President:

I am directed by the Governor to inform the Senate that on the thirteenth day of January, 2010, he approved and signed a bill originating in the Senate of the following title:

S. 93. An act relating to commercial vehicle operation on the interstate system.

Consideration Postponed

Senate bill entitled:

S. 99.

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Bill Passed

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

S. 163. An act relating to technical corrections to 2009 sex offender legislation.

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, January 19, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 41.

TUESDAY, JANUARY 19, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

Pledge of Allegiance

Pages Ira Fisher and Leah Hanzas then led the members of the Senate in the pledge of allegiance.

Joint 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 Shumlin,

J.R.S. 42. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, January 22, 2010, it be to meet again no later than Tuesday, January 26, 2010.

Joint Resolutions Placed on Calendar**J.R.S. 43.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senator Shumlin,

J.R.S. 43. Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, February 18, 2010, at ten o'clock and thirty minutes in the forenoon to elect two legislative Trustees of the Vermont State Colleges Corporation to serve a four year term commencing March 1, 2010, and expiring on March 1, 2014. In case election of all such Trustees shall not be made on that day, the two Houses shall meet in Joint Assembly at ten o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed in such election, until all such Trustees are elected.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

J.R.S. 44.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senator Shumlin,

J.R.S. 44. Joint resolution establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality vote by the General Assembly in 2010.

Whereas, in recent years it has become increasingly necessary to shorten the length of time spent by the General Assembly in joint session for the election of various officials, and

Whereas, if elections for multiple vacancies were to be decided by a plurality vote, then a great savings of time can be effectuated, *now therefore be it*

Resolved by the Senate and House of Representatives:

That, notwithstanding the current provisions of Joint Rule 10, and for this election only, the election of two legislative trustees of the Vermont State Colleges Corporation at a Joint Assembly to be held on February 18, 2010, shall be governed by the following procedure:

(1) All candidates for the office of Trustee shall be voted upon and decided on the same ballot; members may vote for any number of candidates up to and including the maximum number of vacancies to be filled, which in this case shall be two.

(2) The two candidates receiving the greater number of votes shall be declared elected to fill the two vacancies.

(3) In the event that the first balloting for the Trustee vacancies results in a tie vote for one or both of the two vacant positions, then voting shall continue on successive ballots for the unfilled position or positions until the vacancies have been filled by election declared of the two candidates receiving the greater number of votes.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Message from the Governor

A message was received from the Governor, by David Coriell, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the fourteenth day of January, 2010, pursuant to 3 V.S.A. §2002(b), I am herewith enclosing the following Executive Order:

01-10. Transfer of certain personnel positions within state government to the Department of Human Resources.

Executive Order Referred

The President laid before the Senate an executive order relating to transfer of certain personnel positions within state government to the Department of Human Resources

STATE OF VERMONT EXECUTIVE DEPARTMENT EXECUTIVE ORDER

[Transfer of Certain Personnel Positions Within State Government to the Department of Human Resources]

- WHEREAS, the Governor, pursuant to 3 V.S.A. §2001, may make such changes in the organization of the executive branch or in the assignment of functions among its units as he considers necessary for efficient administration; and
- WHEREAS, it is desirable to reorganize the departments and divisions of government by better coordinating certain activities and improve the coordination and effectiveness of services to the public; and
- WHEREAS, the Governor, pursuant to 3 V.S.A. §209, may transfer, temporarily or permanently, subordinates of any one department to another, as the needs of the State require and shall “provide for and require a practical working system to insure efficiency and mutual helpfulness among the departments” of State government; and
- WHEREAS, the Department of Human Resources is required to provide for centralized human resources management, 3 V.S.A. §2283(a), and to administer the State of Vermont’s workforce, including personnel administration, labor relations, workforce training, and benefits, 3 V.S.A. §309 *et seq.*; and
- WHEREAS, presently, personnel functions are performed by employees within state agencies and departments who are not subject to the authority of the Department of Human Resources; and

WHEREAS, the State could improve and enhance its ability to provide services to the public through the transfer of all personnel functions and associated positions within agencies and departments to the Department of Human Resources.

NOW THEREFORE, by virtue of the authority vested in me by 3 V.S.A., chapter 41 as Governor, I, James H. Douglas, do hereby:

1. Transfer, effective July 1, 2010, the following positions and incumbents from the Agencies and Departments designated below to the Department of Human Resources:

Position # Position Title and Agency/Department

Administration

040518	AoA Human Resource Director
040519	Personnel Administrator D
040520	Personnel Administrator D

Human Services

720005	Human Services Personnel Chief
720020	Personnel Administrator D
720016	HR Coordinator
720009	Personnel Administrator D
720018	HR Coordinator
720026	AHS Personnel Assistant
720017	Corrections Human Resources Administrator
720107	AHS Personnel Assistant
720019	Personnel Administrator B
720023	AHS Personnel Assistant
620004	VVH Human Resources Administrator
620179	Personnel Administrator A
720057	AHS Investigation Chief
720056	AHS Investigator
720055	AHS Investigator

Natural Resources

630071	Agency Human Resources Chief
630017	Human Resources Technician
630016	Personnel Administrator C

Transportation

860549	AOT Human Resources Chief
860304	AOT Human Resources Manager
860461	Personnel Administrator C
860003	Personnel Administrator D

860685	Personnel Administrator C
860285	Human Resources Administrator
861702	AOT Human Resources Spec III
861263	Personnel Administrator B
860935	Personnel Administrator D
860118	Personnel Administrator D
860275	AOT Investigator

BISHCA

290089	Personnel Administrator C
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Education

770187	Education Human Resource Administrator
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Labor

820429	VT DOL Human Resource Admin
820464	Personnel Administrator C
820087	Administrative Assistant B

Military

320105	Personnel Administrator D
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Public Safety

330121	Pub Safety Human Resources Manager
330310	Personnel Administrator C

Liquor Control

310002	Personnel Administrator B
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Lottery

800012	Personnel Administrator A
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2. Transfer, effective July 1, 2010, any and all appropriations associated with the above listed positions from the affected Agencies and Departments to the Department of Human Resources.
3. Transfer, effective July 1, 2010, the functions, equipment, supplies and inventory associated with the above listed positions from the affected Agencies and Departments to the Department of Human Resources.
4. Direct the Commissioner of the Department of Human Resources to define the position duties and take appropriate classification actions prior to the effective date of the transfer. The Commissioner shall also take, with the assistance of the Agency Secretaries and Department Commissioners affected by the transfer, any and all necessary actions to organize, plan and effect an orderly transfer and transition.

This Executive Order shall be submitted to the General Assembly pursuant to 3 V.S.A. § 2002(b) and shall take effect on April 16, 2010, unless disapproved by resolution of the General Assembly.

Witness my name hereunto subscribed and the Great Seal of the State of Vermont hereunto affixed at Montpelier this 14th day of January, A.D. 2010.

/s/ James H. Douglas

James H. Douglas
Governor

By the Governor:

/s/David M. Coriell

David M. Coriell
Secretary of Civil and Military Affairs
EXECUTIVE ORDER NO. 01-10

Thereupon, pursuant to the rules of the Senate, Executive Order No. 01-10 was referred to the Committee on Government Operations.

**Rules Suspended; Third Reading Ordered, Rules Suspended; Bill Passed;
Bill Messaged**

H. 477.

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

An act relating to reauthorizing the Lake Champlain reciprocal fishing license.

Was taken up for immediate consideration.

Senator Lyons, for the Committee on Natural Resources and Energy, 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 Shumlin, 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 Shumlin, the rules were suspended and the bill was ordered messaged to the House forthwith.

Consideration Postponed

Senate bill entitled:

S. 99.

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Recess

On motion of Senator Shumlin the Senate recessed until 1:50 P.M.

Called to Order

At 1:55 P.M. the Senate was called to order by the President *pro tempore*.

Rules Suspended; Bill Ordered to Lie**S. 99.**

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

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

Was taken up for immediate consideration.

Thereupon, pending the question, Shall the bill be read a third time?, on motion of Senator Mazza, the bill was ordered to lie.

President Assumes the Chair**Recess**

On motion of Senator Shumlin the Senate recessed until the fall of the gavel.

Called to Order

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

Joint Assembly

At two o'clock, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 39. Joint resolution to provide for a Joint Assembly to hear the budget message of the Governor.

The Senate repaired to the hall of the House.

Having returned therefrom, at two o'clock and forty-seven minutes, the President assumed the Chair.

Senate Concurrent Resolutions

The following joint concurrent resolutions, 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, are hereby adopted on the part of the Senate:

By Senators Hartwell and Sears,

By Representative Wilson,

S.C.R. 35.

Senate concurrent resolution congratulating Mildred Fern Beattie Forrest on her 100th birthday.

By Senators Kitchel and Choate,

By Representative Crawford and others,

S.C.R. 36.

Senate concurrent resolution congratulating Ben and Rosalie Harris on being named the recipients of the 2009 David G. Rahr Community Service Award.

House Concurrent Resolutions

The following joint concurrent resolutions, 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, are hereby adopted in concurrence:

By Representatives Martin and Emmons,

By Senators Campbell, McCormack and Nitka,

H.C.R. 193.

House concurrent resolution congratulating Harold and Marion Grout of Springfield on their 70th wedding anniversary.

By Representative Acinapura,

H.C.R. 194.

House concurrent resolution congratulating former Brandon volunteer fire department chief Charles Rivers on the 50th anniversary of his firefighting service.

By Representative O'Brien and others,

By Senator Racine,

H.C.R. 196.

House concurrent resolution congratulating the 2009 Mount Mansfield Union High School Cougars Division I championship boys' cross-country team.

By Representative Myers and others,

H.C.R. 197.

House concurrent resolution congratulating the 2009 Essex High School Rebels Division I girls' championship track and field team.

By Representative Myers and others,

H.C.R. 198.

House concurrent resolution congratulating the 2009 Essex High School Hornets Division I championship softball team.

By Representative Myers and others,

H.C.R. 199.

House concurrent resolution congratulating the 2009 Essex High School Division I championship boys' golf team.

By Representative Klein and others,

By Senators Cummings, Doyle and Scott,

H.C.R. 200.

House concurrent resolution congratulating U-32 Raiders boys' basketball coach Dan Gandin on his induction into the New England Basketball Hall of Fame.

By Representative Acinapura,

H.C.R. 201.

House concurrent resolution congratulating John Barnes on the 50th anniversary of his service as a Brandon volunteer firefighter.

By Representative South and others,

By Senators Choate and Kitchel,

H.C.R. 202.

House concurrent resolution congratulating Hannah Rowe of St. Johnsbury Academy on her interscholastic cross-country running accomplishments.

By Representatives Lanpher and Clark,

By Senators Ayer and Giard,

H.C.R. 203.

House concurrent resolution in memory of retired Vergennes fire chief Ralph J. Jackman.

By Representative Stevens and others,

By Senators Doyle, Cummings and Scott,

H.C.R. 204.

House concurrent resolution congratulating the 2009 Harwood Union High School Highlanders girls' and boys' Division II championship cross-country teams.

Message from the House No. 7

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. 193. House concurrent resolution congratulating Harold and Marion Grout of Springfield on their 70th wedding anniversary.

H.C.R. 194. House concurrent resolution congratulating former Brandon volunteer fire department chief Charles Rivers on the 50th anniversary of his firefighting service.

H.C.R. 196. House concurrent resolution congratulating the 2009 Mount Mansfield Union High School Cougars Division I championship boys' cross-country team.

H.C.R. 197. House concurrent resolution congratulating the 2009 Essex High School Rebels Division I girls' championship track and field team.

H.C.R. 198. House concurrent resolution congratulating the 2009 Essex High School Hornets Division I championship softball team.

H.C.R. 199. House concurrent resolution congratulating the 2009 Essex High School Division I championship boys' golf team.

H.C.R. 200. House concurrent resolution congratulating U-32 Raiders boys' basketball coach Dan Gandin on his induction into the New England Basketball Hall of Fame.

H.C.R. 201. House concurrent resolution congratulating John Barnes on the 50th anniversary of his service as a Brandon volunteer firefighter.

H.C.R. 202. House concurrent resolution congratulating Hannah Rowe of St. Johnsbury Academy on her interscholastic cross-country running accomplishments.

H.C.R. 203. House concurrent resolution in memory of retired Vergennes fire chief Ralph J. Jackman.

H.C.R. 204. House concurrent resolution congratulating the 2009 Harwood Union High School Highlanders girls' and boys' Division II championship cross-country teams.

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

Message from the House No. 8

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 concurrent resolutions originating in the Senate of the following titles:

S.C.R. 34. Senate concurrent resolution congratulating Lumbermens Merchandising Corporation on its 75th anniversary.

S.C.R. 35. Senate concurrent resolution congratulating Mildred Fern Beattie Forrest on her 100th birthday.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, January 22, 2010.

FRIDAY, JANUARY 22, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Mary Mansfield of Middlesex.

Message from the House No. 9

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. 483. An act relating to approval of the merger of the Village of North Westminster and the Town of Westminster and the charter of the Town of Westminster.

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

The Governor has informed the House that on the January 19, 2010, he approved and signed a bill originating in the House of the following title:

H. 477. An act relating to reauthorizing the Lake Champlain reciprocal fishing license.

Message from the House No. 10

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. 42. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 11

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. 515. An act relating to LIHEAP income eligibility.

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

Bills Referred

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

H. 483.

An act relating to approval of the merger of the Village of North Westminster and the Town of Westminster and the charter of the Town of Westminster.

To the Committee on Government Operations.

H. 515.

An act relating to LIHEAP income eligibility.

To the Committee on Appropriations.

Message from the Governor Appointments Referred

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

Epstein, Giner L. of Cambridge - Member of the Vermont Tobacco Evaluation and Review Board, - from January 11, 2010, to June 30, 2011.

To the Committee on Health and Welfare.

Gurin, Steven of Barre - Member of the Vermont Educational and Health Buildings Financing Agency, - from February 1, 2010, to January 31, 2016.

To the Committee on Finance.

Gibbons, Kenneth of Hyde Park - Member of the Vermont Educational and Health Buildings Financing Agency, - from February 1, 2010, to January 31, 2016.

To the Committee on Finance.

Joint Resolutions Adopted on the Part of the Senate

Joint Senate resolutions entitled:

J.R.S. 43. Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

J.R.S. 44. Joint resolution establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality vote by the General Assembly in 2010.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, January 26, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 42.

TUESDAY, JANUARY 26, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by Rabbi James Glazier of Burlington.

Pledge of Allegiance

Pages Clare Salerno and Hunter Riehle then led the members of the Senate in the pledge of allegiance.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 278.

By the Committee on Finance,

An act relating to the department of banking, insurance, securities, and health care administration.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

S. 198.

On motion of Senator White, the rules were suspended, and S. 198 was taken up for immediate consideration, for the purpose of relieving the Committee on Government Operations from further consideration of the bill. Thereupon, on motion of Senator White, the Committee on Government Operations was relieved of Senate bill entitled:

An act relating to the Vermont Economic Development Board,
and the bill was committed to the Committee on Economic Development, Housing and General Affairs.

Joint 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 Shumlin,

J.R.S. 45. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, January 29, 2010, it be to meet again no later than Tuesday, February 2, 2010.

Rules Suspended; Third Reading Ordered, Rules Suspended; Bill Passed; Bill Messaged

H. 515.

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

An act relating to LIHEAP income eligibility.

Was taken up for immediate consideration.

Senator Kitchel, for the Committee on Appropriations, 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 Shumlin, 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 Shumlin, the rules were suspended and the bill was ordered messaged to the House forthwith.

Third Reading Ordered

S. 161.

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

An act relating to National Crime Prevention and Privacy Compact.

Reported that the bill ought to pass.

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

Bills Amended; Third Readings Ordered

S. 154.

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

An act relating to repealing the sunset on criminal history record check fees.

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

Sec. 1. 20 V.S.A. § 2056c is amended to read:

§ 2056c. DISSEMINATION OF CRIMINAL CONVICTION RECORDS TO THE PUBLIC

* * *

(c) Criminal conviction records shall be disseminated to the public by the center under the following conditions:

* * *

(10) No person entitled to receive a criminal conviction record pursuant to this section shall require an applicant to obtain, submit personally, or pay for a copy of his or her criminal conviction record, except that this subdivision shall not apply to a local governmental entity with respect to criminal conviction record checks for licenses or vendor permits required by the local governmental entity.

Sec. 2. REPEAL

Sec. 9(b) of No. 165 of the Acts of the 2007 Adj. Sess. (2008) (sunset of criminal history record check fees and criminal history record check fund) is repealed.

Sec. 3. 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.

S. 158.

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

An act relating to marriage records.

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

Sec. 1. 18 V.S.A. § 5131(a)(2) is amended to read:

(2) The department shall prescribe forms that allow each party to a marriage to be designated “bride,” “groom,” or “spouse,” as he or she chooses, and the application shall be in substantially the following form:

VERMONT DEPARTMENT OF HEALTH

APPLICATION FOR VERMONT LICENSE OF CIVIL MARRIAGE

FEE FOR CIVIL MARRIAGE LICENSE: \$45.00, FEE FOR CERTIFIED
COPY \$10.00

BRIDE/GROOM/SPOUSE (circle one)

NAME (First) (Middle) (Last)								
SEX	DATE OF BIRTH (e.g., July 1, 2009)	AGE						
BIRTHPLACE		EDUCATION (Circle No. Yrs. Completed)						
		<table border="1"> <tr> <td>GRADES</td> <td>GRADES</td> <td>COLLEGE</td> </tr> <tr> <td>1-8</td> <td>9-12</td> <td>(1-5+)</td> </tr> </table>	GRADES	GRADES	COLLEGE	1-8	9-12	(1-5+)
GRADES	GRADES	COLLEGE						
1-8	9-12	(1-5+)						
RESIDENCE (No. and Street)								
CITY OR TOWN	COUNTY	STATE						
RACE — White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino (Specify)								
FATHER'S NAME (First, Middle, Last)								
FATHER'S BIRTHPLACE (State or Foreign Country)		MOTHER'S BIRTHPLACE (State or Foreign Country)						
MOTHER'S MAIDEN NAME (First, Middle, Maiden Surname)								
<u>The confidential information below is optional. It will not appear on certified copies of the record.</u>								
NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION						
Date last marriage or civil union ended _____ Month _____ Year								

LAST RELATIONSHIP ENDED BY: 1. <input type="checkbox"/> DEATH 2. <input type="checkbox"/> DISSOLUTION 3. <input type="checkbox"/> ANNULMENT 4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER
Does either party have a legal guardian _____ Yes _____ No

BRIDE/GROOM/SPOUSE (circle one)

NAME (First) (Middle) (Last)			
SEX	DATE OF BIRTH <small>(e.g., July 1, 2009)</small>		AGE
BIRTHPLACE		EDUCATION (Circle No. Yrs. Completed)	
		GRADES 1-8	GRADES 9-12
		COLLEGE (1-5+)	
RESIDENCE (No. and Street)			
CITY OR TOWN		COUNTY	STATE
RACE — White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino <small>(Specify)</small>			
FATHER'S NAME (First, Middle, Last)			
FATHER'S BIRTHPLACE (State or Foreign Country)		MOTHER'S BIRTHPLACE (State or Foreign Country)	
MOTHER'S MAIDEN NAME (First, Middle, Maiden Surname)			
<u>The confidential information below is optional. It will not appear on certified copies of the record.</u>			

NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION
Date last marriage or civil union ended _____ Month _____ Year		
LAST RELATIONSHIP ENDED BY: 1. <input type="checkbox"/> DEATH 2. <input type="checkbox"/> DISSOLUTION 3. <input type="checkbox"/> ANNULMENT 4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER		
Does either party have a legal guardian _____ Yes _____ No		

APPLICANTS
<p>We hereby certify that the information provided is correct to the best of our knowledge and belief and that we are free to marry under the laws of Vermont <u>WE HEREBY CERTIFY THAT THE INFORMATION PROVIDED IS CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF AND THAT WE ARE FREE TO MARRY UNDER THE LAWS OF VERMONT .</u></p>
SIGNATURE _____ SIGNATURE _____ Date signed: _____ Date signed: _____
Planned marriage date _____ Location (City or town) _____ Officiant Name & Address _____ Your mailing address after wedding _____ Do you want a certified copy of your Marriage Certificate? (\$10.00) _____ Yes _____ No

Date License issued _____ Clerk issuing License _____

This worksheet may be destroyed after marriage is registered.

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.

S. 165.

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

An act relating to eliminating the statute of limitations for felonies.

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

Sec. 1. 13 V.S.A. § 4503 is amended to read:

§ 4503. PROCEEDINGS BEGUN AFTER TIME LIMITATION

(a) If a prosecution for a felony or misdemeanor, other than arson and murder, is commenced after the time limited by section 4501 or 4502 of this title, such proceedings shall be void.

(b) If a defendant knowingly and voluntarily waives the statute of limitations in writing and with the consent of the prosecution, the court shall have jurisdiction over the offense and the proceedings shall be valid.

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.

S. 173.

Senator Cummings, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to technical corrections to the trust laws.

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

Sec. 1. 4 V.S.A. § 113 is amended to read:

§ 113. JURISDICTION GENERALLY

Each superior court within the several counties shall have original and exclusive jurisdiction of all original civil actions, except those actions listed in section 437 of this title and those made cognizable by the probate court, the environmental court, the family court, judicial bureau, or the supreme court,

and of such petitions as may by law be brought before the superior court; appellate jurisdiction of causes, civil and criminal, appealable to the court; and original jurisdiction, concurrent with the supreme court, of proceedings in certiorari, mandamus, prohibition, and quo warranto, and may render judgment thereon according to law. The superior court shall also have exclusive jurisdiction to hear and dispose of any requests to modify or enforce any orders in civil cases issued by the superior or district court other than orders relating to those actions listed in sections 437 and 454 of this title.

Sec. 2. 4 V.S.A. § 311 is amended to read:

§ 311. JURISDICTION GENERALLY

The probate court shall have jurisdiction of the probate of wills, the settlement of estates, the administration of trusts ~~created by will~~ pursuant to Title 14A, trusts of absent person's estates, charitable, cemetery, and philanthropic trusts, ~~irrevocable trusts created by inter vivos agreements solely for the purpose of removal and replacement of trustees pursuant to subsection 2314(e) of Title 14,~~ the appointment of guardians, and of the powers, duties, and rights of guardians and wards, proceedings concerning chapter 231 of Title 18, accountings of attorneys in fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent, relinquishment for adoption, adoptions, uniform gifts to minors, changes of name, issuance of new birth certificates, amendment of birth certificates, correction or amendment of civil marriage certificates, correction or amendment of death certificates, emergency waiver of premarital medical certificates, proceedings relating to cemetery lots, trusts relating to community mausoleums or columbariums, civil actions brought under subchapter 3 of chapter 107 of Title 18 relating to disposition of remains, proceedings relating to the conveyance of a homestead interest of a spouse under a legal disability, the issuance of declaratory judgments, issuance of certificates of public good authorizing the civil marriage of persons under 16 years of age, appointment of administrators to discharge mortgages held by deceased mortgagees, appointment of trustees for persons confined under sentences of imprisonment, fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries, and as otherwise provided by law.

Sec. 3. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to probate courts, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a district of the court as follows:

* * *

(4) ~~Trust estate created by will: in the district where the decedent's will is allowed. [Repealed.]~~

* * *

(6) ~~Charitable, cemetery and philanthropic~~ Cemetery trusts:

(A) in the district where the trustee resides; or

(B) in the district where the creation of the trust is recorded.

* * *

Sec. 4. 14A V.S.A. § 102 is amended to read:

§ 102. SCOPE

This title applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This title shall not apply to trusts described in the following provisions of Vermont Statutes Annotated: chapter 16 of Title 3, chapter 151 of Title 6, chapters 103, 204, and 222 of Title 8, chapters 11A, 12, and 59 of Title 10, chapter 7 of Title 11A, chapter 11 of Title 15, chapters 55, 90, and 131 of Title 16, chapters 121, 177, and 225 of Title 18, chapter 9 of Title 21, chapters 65, 119, 125, and 133 of Title 24, ~~chapters 5 and chapter~~ chapter 7 of Title 27, chapter 11 of Title 28, chapter 16 of Title 29, and chapters 84 and 91 of Title 30, but section 1013 of this title (certification of trust) shall apply to all such trusts.

Sec. 5. 14A V.S.A. § 103 is amended to read:

§ 103. DEFINITIONS

* * *

(13)(A) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined, is:

(i) a “first tier” beneficiary as a distributee or permissible distributee of trust income or principal;

(ii) a “second tier” beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (A)(i) of this subdivision (13) terminated on that date without causing the trust to terminate; or

(iii) a “final beneficiary” who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(B) Notwithstanding subdivisions ~~(i)~~(ii) and ~~(ii)~~(iii) of subdivision (A) of this subdivision (13), a second tier beneficiary or a final beneficiary shall not be a “qualified beneficiary” if the beneficiary’s interest in the trust:

(i) is created by the exercise of a power of appointment and the exercise of the power of appointment is not irrevocable; or

(ii) may be eliminated by an amendment to the trust.

Sec. 6. 14A V.S.A. § 402 is amended to read:

§ 402. REQUIREMENTS FOR CREATION

(a) A trust is created only if:

* * *

(5) the same person is not the sole trustee and ~~current~~ and sole beneficiary of all beneficial interests.

* * *

Sec. 7. 14A V.S.A. § 504 is amended to read:

§ 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD

* * *

(e) If the trustee’s or cotrustee’s discretion to make distributions for the trustee’s or cotrustee’s own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor’s claim were the beneficiary not acting as trustee or cotrustee.

Sec. 8. 14A V.S.A. § 706 is amended to read:

§ 706. REMOVAL AND REPLACEMENT OF TRUSTEE

* * *

(c) The probate court may remove an existing trustee, and appoint a replacement trustee subject to the provisions of section 704 of this title, if the probate court finds that a change in trustee would be in keeping with the intent of the settlor. In deciding whether to replace a trustee under this subsection, the probate court may consider the following factors:

* * *

(2) The relationship between the ~~grantor~~ settlor and the trustee as it existed at the time the trust was created;

* * *

Sec. 9. 14A V.S.A. § 802 is amended to read:

§ 802. DUTY OF LOYALTY

* * *

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 1012 of this title, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

* * *

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee; or

* * *

Sec. 10. 14A V.S.A. § 907 is amended to read:

§ 907. TOTAL RETURN UNITRUSTS

* * *

(b) A trustee, other than an interested trustee, or when two or more persons are acting as trustee, a majority of the trustees who are not an interested trustee (in either case referred to in this subsection as "trustee"), may, in its sole discretion and without the approval of the probate court:

* * *

(3) Change the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust if:

* * *

(C) At least one person receiving such notice in each tier described in subdivision 103(13) of this title (first tier, second tier, and final beneficiaries) is legally competent; and

* * *

Sec. 11. 14A V.S.A. § 1013 is amended to read:

§ 1013. CERTIFICATION OF TRUST

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee of a trust at any time after execution or creation of a trust may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The

certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the trustee that the statements contained in the certificate of trust are true and correct. The signature of the trustee must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:

* * *

(3) the name of each ~~grantor or~~ settlor;

* * *

(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the ~~trustees~~ trustee to act.

* * *

(c) A certificate of trust is conclusive proof as to the matters contained in the certificate, and any party may rely upon the continued effectiveness of the certificate unless:

(1) a party dealing with the trustee ~~or trustees~~ has actual knowledge of facts to the contrary;

* * *

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.

Recess

On motion of Senator Shumlin the Senate recessed until 1:00 P.M..

Called to Order

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the time for convening of the Senate having been set at one o'clock in the afternoon, the Senate was called to order by David A. Gibson, Secretary of the Senate.

Presiding Officer Elected

Thereupon, pursuant to the provisions of Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the Senate proceeded to the election of an acting President *pro tempore* to preside.

Nominations being in order, Senator Campbell nominated Senator Richard T. Mazza to be acting President *pro tempore*.

There being no further nominations, on motion of Senator Campbell, the nominations were closed, and the Assistant Secretary was instructed to cast one ballot for Senator Richard T. Mazza to serve as presiding officer until the return of the President or the President *pro tempore*.

Senator Mazza Assumes the Chair

Message from the House No. 12

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. 534. An act relating to fiscal year 2010 budget adjustment.

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

The House has considered joint resolutions originating in the Senate of the following titles:

J.R.S. 43. Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

J.R.S. 44. Joint resolution establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality vote by the General Assembly in 2010.

And has adopted the same in concurrence.

The House has concurred in the adoption of a proposed amendment to the Vermont Constitution entitled:

Proposal 5. Right to vote in primary elections.

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 205. House concurrent resolution in memory of Ted Bridges.

H.C.R. 206. House concurrent resolution congratulating the 2009 Essex High School Hornets Division I championship football team.

H.C.R. 207. House concurrent resolution honoring Ski for Heat founder Martha Robertson on the event's 10th anniversary.

H.C.R. 208. House concurrent resolution honoring retired Winooski city clerk-treasurer Pauline Schmoll.

H.C.R. 209. House concurrent resolution congratulating the 2009 South Burlington High School Rebels Division I championship lacrosse team.

H.C.R. 210. House concurrent resolution congratulating RockTenn of Sheldon Springs on its receipt of the 2009 Franklin County Industrial Development.

H.C.R. 211. House concurrent resolution congratulating South Burlington High School Athletic Director Mike O'Day on his receipt of the 2009 Thomas E. Frederick Award of Excellence.

H.C.R. 212. House concurrent resolution congratulating the Great Falls Community Kitchen on its 20th anniversary.

H.C.R. 213. House concurrent resolution congratulating Craig Divis on being named the 2010 Vermont Teacher of the Year.

H.C.R. 214. House concurrent resolution congratulating Brittany Langston on her singing appearance at Fenway Park.

H.C.R. 215. House concurrent resolution congratulating Dammy Mustapha and Alisa Dupuis on winning the male and female championship, respectively, at the 2009 Knights of Columbus Decathlon and Heptathlon.

H.C.R. 216. House concurrent resolution congratulating the Yellow Barn Music School & Festival on its 40th anniversary.

H.C.R. 217. House concurrent resolution honoring Louise Thompson as the oldest resident in the village of Saxtons River.

H.C.R. 218. House concurrent resolution recognizing Nurse Anesthetists Week in Vermont.

H.C.R. 219. House concurrent resolution in memory of the American military and Central Intelligence Agency personnel who have died in the service of their nation in Iraq or Afghanistan from January 21, 2009 to December 31, 2009.

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

Bill Referred

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

H. 534.

An act relating to fiscal year 2010 budget adjustment.

To the Committee on Appropriations.

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By Representative Smith,

H.C.R. 205.

House concurrent resolution in memory of Ted Bridges.

By Representative Evans and others,

H.C.R. 206.

House concurrent resolution congratulating the 2009 Essex High School Hornets Division I championship football team.

By Representative Komline and others,

By Senators Campbell, Carris, Hartwell, Mullin, Nitka and Sears,

H.C.R. 207.

House concurrent resolution honoring Ski for Heat founder Martha Robertson on the event's 10th anniversary.

By Representatives Bissonnette and Atkins,

H.C.R. 208.

House concurrent resolution honoring retired Winooski city clerk-treasurer Pauline Schmoll.

By Representative Audette and others,

H.C.R. 209.

House concurrent resolution congratulating the 2009 South Burlington High School Rebels Division I championship lacrosse team.

By Representative Savage and others,

H.C.R. 210.

House concurrent resolution congratulating RockTenn of Sheldon Springs on its receipt of the 2009 Franklin County Industrial Development Corporation's business award.

By Representative Audette and others,

H.C.R. 211.

House concurrent resolution congratulating South Burlington High School Athletic Director Mike O'Day on his receipt of the 2009 Thomas E. Frederick Award of Excellence.

By Representative Obuchowski and others,

H.C.R. 212.

House concurrent resolution congratulating the Great Falls Community Kitchen on its 20th anniversary.

By Representative Obuchowski and others,

H.C.R. 213.

House concurrent resolution congratulating Craig Divis on being named the 2010 Vermont Teacher of the Year.

By Representative Obuchowski and others,

H.C.R. 214.

House concurrent resolution congratulating Brittany Langston on her singing appearance at Fenway Park.

By Representative Obuchowski and others,

H.C.R. 215.

House concurrent resolution congratulating Dammy Mustapha and Alisa Dupuis on winning the male and female championship, respectively, at the 2009 Knights of Columbus Decathlon and Heptathlon.

By Representative Obuchowski and others,

H.C.R. 216.

House concurrent resolution congratulating the Yellow Barn Music School & Festival on its 40th anniversary.

By Representative Obuchowski and others,

H.C.R. 217.

House concurrent resolution honoring Louise Thompson as the oldest resident in the village of Saxtons River.

By Representative Keenan and others,

H.C.R. 218.

House concurrent resolution recognizing Nurse Anesthetists Week in Vermont.

By Representative Obuchowski and others,

H.C.R. 219.

House concurrent resolution in memory of the American military and Central Intelligence Agency personnel who have died in the service of their nation in Iraq or Afghanistan from January 21, 2009 to December 31, 2009.

Adjournment

On motion of Senator Campbell, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, January 29, 2010.

FRIDAY, JANUARY 29, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

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

Message from the House No. 13

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. 461. An act relating to small estates.

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. 45. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 14

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. 485. An act relating to the use value appraisal program.

H. 533. An act relating to military parents' rights.

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

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 279.

By Senator Campbell,

An act relating to nonunanimous jury verdicts in civil actions.

To the Committee on Judiciary.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 280.

By the Committee on Transportation,

An act relating to prohibiting texting while operating on a highway.

Bills Referred

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

H. 461.

An act relating to small estates.

To the Committee on Judiciary.

H. 485.

An act relating to the use value appraisal program.

To the Committee on Finance.

H. 533.

An act relating to military parents' rights.

To the Committee on Judiciary.

President Assumes the Chair**Senate Resolution Referred****S.R. 17.**

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

By Senators Shumlin, Miller, Ashe, Carris, Choate and White,

S.R. 17. Senate resolution urging Congress to authorize alternative waivers to the 21-year-old minimum drinking age that do not entail federal highway funding penalties for states.

Whereas, in 1984, Congress enacted Public Law 97-364, which in Sec. 101(a) added 23 U.S.C. § 408(f)(6) to the United States Code that established the statutory basis for the federal penalty that withholds ten percent of a state's federal highway funding if the state's drinking age is lower than 21, and

Whereas, many years of experience have shown that the 21-year-old drinking age is a contributing factor to a culture of dangerous and clandestine binge drinking, and

Whereas, raising the drinking age to 21 coincided with societal benefits, but many of these are attributable to advancements in safety, technology and education, including the encouraging of use of designated drivers, and

Whereas, many of the benefits initially achieved after the drinking age was raised to 21 are now being offset due to the primarily unintentional and negative consequences related to continued and unsupervised underage drinking, and

Whereas, law enforcement officials have stated that it is difficult to enforce laws preventing minors from possessing alcohol, and that enforcement efforts push underage drinking further underground to settings that are unsupervised, which has led to greater alcohol consumption, and

Whereas, this problem is reaching crisis proportions, and

Whereas, we consider our young adults responsible enough to defend our country and to elect our public officials at the age of 18, but we do not allow them to drink until they turn 21, and

Whereas, we do not let our soldiers go to war without training and do not let our young adults drive without training, but we prevent young persons from drinking until the age of 21, at which time they are immediately able to drink without education or training, and

Whereas, the current ten percent highway funding penalty prevents an open and informed public debate about the effects of the 21-year-old drinking age as well as about the exploration and testing of innovative educational solutions to address what has become a secret culture of unsupervised overindulgence, and

Whereas, in September 2008 the United States Congress passed resolutions celebrating 75 years of effective state-based alcohol regulation which recognized state lawmakers, regulators, law enforcement officers, the public health community and industry members for creating a workable, legal and successful system of alcoholic beverage regulation, distribution and sale, and

Whereas, given the constitutional authority of states to regulate alcohol within their borders, Congress should consider looking at innovative solutions that reflect the current reality to address this growing problem, and

Whereas, since the 1980s, there has been significant advancement on this issue, and it deserves proper scrutiny, and

Whereas, each state has unique qualities and citizens that make a one-size-fits-all solution difficult, and each state should have the opportunity to explore solutions to the continuing drinking problem by developing a comprehensive program that addresses its unique situation, and

Whereas, policy options, such as a waiver of the ten percent highway funding penalty for any state that is willing to meet specified criteria or alternatively to implement educational or licensing programs to address the problem of binge drinking in its state, should be considered and explored, *now therefore be it*

Resolved by the Senate:

That the Senate of the State of Vermont urges Congress to grant a waiver to the financial penalty for a state that does not adhere to the federal minimum legal drinking age and to authorize the implementation of innovative state criteria for a trial period that are designed to address the growing problem of binge drinking, *and be it further*

Resolved: That the State of Vermont is interested in being a progressive leader that would take advantage of a federal waiver program that encourages

innovative solutions to the growing problem of binge drinking, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the Vermont congressional delegation.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Economic Development, Housing and General Affairs.

Message from the Governor Appointment Referred

A message was received from the Governor, by David Coriell, Secretary of Civil and Military Affairs, submitting the following appointment, which was referred to a committee as indicated:

Cioffi, Frank of St. Albans – Member and Chair of the Vermont Lottery Commission, - from January 22, 2010, to February 28, 2011.

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

Rules Suspended; Committee Relieved of Further Consideration; Bills Committed

S. 205.

On motion of Senator Mullin, the rules were suspended, and S. 205 was taken up for immediate consideration, for the purpose of relieving the Committee on Health and Welfare from further consideration of the bill. Thereupon, on motion of Senator Mullin, the Committee on Health and Welfare was relieved of Senate bill entitled:

An act relating to the Revised Uniform Anatomical Gift Act,
and the bill was committed to the Committee on Government Operations.

S. 226.

On motion of Senator Mullin, the rules were suspended, and S. 226 was taken up for immediate consideration, for the purpose of relieving the Committee on Health and Welfare from further consideration of the bill. Thereupon, on motion of Senator Mullin, the Committee on Health and Welfare was relieved of Senate bill entitled:

An act relating to medical marijuana dispensaries,
and the bill was committed to the Committee on Government Operations.

Bill Passed

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

S. 154. An act relating to repealing the sunset on criminal history record check fees.

Bill Amended; Bill Passed**S. 158.**

Senate bill entitled:

An act relating to marriage records.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the bill in Sec. 1, 18 V.S.A. § 5131(a)(2), in the forms, in the two instances after the words: "confidential information below" by inserting the following words: relating to previous marriages and civil unions

Which was agreed to.

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

Bill Passed

Senate bills of the following titles were severally read the third time and passed:

S. 161. An act relating to National Crime Prevention and Privacy Compact.

S. 165. An act relating to eliminating the statute of limitations for felonies.

S. 173. An act relating to technical corrections to the trust laws.

Bill Amended; Third Reading Ordered**S. 196.**

Senator Hartwell, for the Committee on Transportation, to which was referred Senate bill entitled:

An act relating to processing the application for motor vehicle emergency light permits.

Reported recommending that the bill be amended by adding a new section to be numbered Sec. 2 to read as follows:

Sec. 2. 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.

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, February 2, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 45.

TUESDAY, FEBRUARY 2, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Duane Somero of South Burlington. Lisa Bixler served as the interpreter.

Pledge of Allegiance

Pages Clara Emlen and Sam Biondolillo then led the members of the Senate in the pledge of allegiance.

Bill Referred to Committee on Appropriations

S. 268.

Senate 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 the building bright futures council.

Rules Suspended; Bill Committed

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

S. 110. An act relating to sheltering livestock.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Judiciary, Senator Mullin moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Agriculture with the report of the Committee on Judiciary *intact*,

Which was agreed to.

Joint 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 Shumlin,

J.R.S. 46. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 5, 2010, it be to meet again no later than Tuesday, February 9, 2010.

Bill Passed

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

S. 196. An act relating to processing the application for motor vehicle emergency light permits.

Proposals of Amendment; Third Reading Ordered**H. 534.**

Senator Bartlett, for the Committee on Appropriations, to which was referred House bill entitled:

An act relating to fiscal year 2010 budget adjustment.

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

First: In Sec. 2, in the section title, by striking out the word “heath” and inserting in lieu thereof the word health

Second: In Sec. 60(a), at the end of “21638 Atty Gen Fees-Reimbursements 1,500,000” by adding the word Approx.

Third: In Sec. 71, amending Sec. B.1101(a) of No. 1 of the Acts of the 2009 Special Session, by adding a new subdivision (15) to read as follows:

(15) To the treasurer’s office for Benefits For The Survivors Of Emergency Personnel to be used in accordance with the requirements of 20 V.S.A. § 3173. \$70,000

Fourth: After Sec. 71, by adding a new section to be numbered Sec 71a to read as follows:

Sec. 71a. Sec. D.104 of No. 1 of the Acts of the 2009 Special Session is amended to read:

Sec. D.104. TRANSFER OF TOBACCO TRUST FUNDS

(a) Notwithstanding 18 V.S.A. § 9502(a)(3) and (4), the actual amount of investment earnings of the tobacco trust fund at the end of fiscal year 2010 and any additional amount necessary to ensure the balance in the tobacco litigation settlement fund at the close of fiscal year 2010 is not negative, shall be transferred from the tobacco trust fund to the tobacco litigation settlement fund in fiscal year 2010.

Fifth: In Sec. 76, amending Sec. 10(b) of No. 2 of the Acts of the 2009 Special Session, by adding a sentence at the end of subsection (b) to read as follows:

The alternate plan may include fund transfers and shall be proportionate in terms of total general funds for the judicial and legislative branches.

Sixth: In Sec. 79, amending Sec. H.1(c) of No. 1 of the Acts of the 2009 Special Session, by striking out the number “15” and inserting in lieu thereof the number 16

Seventh: By striking out Sec. 82 in its entirety and inserting in lieu thereof a new Sec. 82 to read as follows:

Sec. 82. REALLOCATION OF FUNDS

(a) Of the funds transferred to the municipal and regional planning fund in Sec. 10(a) of No. 178 of the Acts of 2006, \$20,951 shall be available for municipal planning grants in fiscal year 2010. Any additional amounts in the municipal and regional planning fund from the above transfer that are deemed unencumbered through award recapture by the commissioner of finance and management shall be available for municipal planning grants in fiscal year 2010.

(b) Of the funds appropriated in Sec. 219(c) of No. 65 of the Acts of 2007 as amended by Sec. 64 of No. 90 of the Acts of 2008 (DeptID 7110010150), and Sec. 233a(a)(6)(B) of No. 65 of the Acts of 2007 (DeptID 7110890702), and Sec. 220 of No. 215 of the Acts of 2006 as amended by Sec. 361 of No. 65 of the Acts of 2007 (DeptID 7110010170); any amounts in the above appropriations that are deemed unencumbered through award recapture by the commissioner of finance and management shall be available for municipal planning grants in fiscal year 2010.

Eighth: By striking out Sec. 88 in its entirety and inserting in lieu thereof two new sections to be numbered Sec. 88 and Sec. 88a to read as follows:

Sec. 88. 9 V.S.A. § 2458(b) is amended to read:

(b) In addition to the foregoing, the attorney general or a state's attorney may request and the court is authorized to render any other temporary or permanent relief, or both, as may be in the public interest including, but not limited to:

(1) the imposition of a civil penalty of not more than \$10,000.00 for each violation;

(2) an order for restitution of cash or goods on behalf of a consumer or a class of consumers similarly situated;

(3) an order requiring reimbursement to the state of Vermont for the reasonable value of its services and its expenses in investigating and prosecuting the action;

(4) amounts other than consumer restitution recovered by the attorney general or department of state's attorneys under this chapter, ~~subject to appropriation each fiscal year,~~ but not to exceed amounts annually appropriated, or authorized pursuant to Sec. 167 of Title 3 or Sec. 511 of Title 32, shall be deposited into special funds which shall be available to the attorney general or department of state's attorneys, respectively to offset the costs of providing legal services.

Sec. 88a. 3 V.S.A. § 167 is added to read:

§ 167. PUBLIC FUNDS INVESTIGATION SPECIAL FUND

There is established a public funds investigation special fund, pursuant to subchapter 5 of chapter 7 of Title 32. At the end of each fiscal year revenue available to the attorney general under 9 V.S.A. § 2458(b)(4) may be used to bring the unencumbered fund balance up to \$100,000.00. Monies in the fund shall be available for expenditure by the attorney general and state's attorneys to pay expenses, as the attorney general and the state auditor shall agree, for independent contractors, including accountants, necessary for investigation and prosecution of embezzlement or other financial crimes in which public funds are alleged to have been misused.

Ninth: After Sec. 95, by adding a new section to be numbered Sec. 95a to read as follows:

Sec. 95a. FIVE-PERCENT PAY CUT; STATE'S ATTORNEYS

(a) For the remainder of fiscal year 2010 and for fiscal year 2011, the compensation of all state's attorneys shall be reduced by five percent from the rate of compensation which would otherwise be paid under the provisions of 32 V.S.A. § 1183.

Tenth: After Sec. 112, by adding a new section to be numbered Sec. 112a to read as follows:

Sec. 112a. EMERGENCY HOUSING FUNDING

(a) Of the additional funds provided to the General Assistance program in Sec. 32 of this Act, \$400,000 is for emergency housing as follows:

(1) \$150,000 for emergency shelters participating in the Emergency Shelter Grant Program (ESGP) to provide overflow shelter and services, and to be administered by the Office of Economic Opportunity; and

(2) \$250,000 for General Assistance targeted to those individuals and families who do not meet the income and/or sustainability criterion of the Homeless Prevention and Rapid Rehousing Program. These funds may be used for rental assistance, security deposits, first month's rent and emergency housing in motels, to be administered directly by the secretary of human services.

Eleventh: After Sec. 112a, by adding a new section to be numbered Sec. 112b to read as follows:

Sec. 112b. VERMONT STATE HOSPITAL; CANTEEN PLAN

(a) The director of the Vermont State Hospital, in collaboration with staff who provide professional mental health services to patients of the facility, shall develop a plan to be included in the fiscal year 2011 appropriations act to reopen the canteen or commissary on July 1, 2010, which shall be accessible to patients, staff, and visitors to the facility. The plan shall be submitted to the house and senate committees on appropriations and house committee on human services and senate committee on health and welfare on or before March 15, 2010. The plan shall be cost neutral to the general fund, but shall recognize that patients may have limited funds to purchase products.

And by renumbering all of the sections of the bill to be numerically correct (including internal references) and adjusting all of the totals to be arithmetically correct.

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, the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

Bills Amended; Third Readings Ordered**S. 187.**

Senator Brock, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to municipal financial audits.

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

Sec. 1. 24 V.S.A. § 1690 is amended to read:

§ 1690. CERTIFIED OR PUBLIC ACCOUNTANT TO AUDIT TOWN ACCOUNTS; WARNING; FORM

(a) ~~The selectmen~~ legislative body of a city, town, and the trustees of an or incorporated village may, and upon ~~upon its own motion contract with a public accountant, licensed in this state, to perform an annual financial audit of all funds of the town; or upon~~ petition in writing of legal voters equal to five percent of the legal voters of the town or village, the legislative body shall, insert in the warning for any annual town or village meeting, or in the warning for a special town or village meeting, which shall be called upon such petition, an article in substantially the following form:

"To see if the [city, town, or village] will vote to instruct the ~~selectmen or trustees~~ [legislative body] to employ a certified public accountant or public accountant to aid the work of the auditors licensed in this state, to perform an annual financial audit of all funds of the [city, town, or village]."

(b) Audits performed by a public accountant under this section shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report on internal control over financial reporting that shall be provided to recipients of the financial statements. When there are material weaknesses or significant deficiencies found in the internal control over financial reporting or the auditor's or public accountant's opinion is qualified, adverse, or disclaimed:

(1) the auditor or public accountant shall present the findings or opinion to the legislative body of the town and explain those material weaknesses or significant deficiencies or his or her opinion at a meeting duly warned for the purpose;

(2) after the audit report is delivered to the legislative body of a municipality, the notice for the next meeting of the legislative body shall also notify the voters of the availability of the audit report and the accompanying report on internal control over financial reporting;

(3) the next published annual report of the town shall include a summary of material weaknesses or significant deficiencies found in the internal controls over financial reporting or a statement that the audit report sets forth an opinion that is qualified, adverse, or disclaimed; and

(4) the legislative body shall post the audit report and the accompanying report on internal control over financial reporting on the municipality's website, if the municipality has a website.

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.

S. 218.

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

An act relating to voyeurism.

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

Sec. 1. 13 V.S.A. § 2605 is amended to read:

§ 2605. VOYEURISM

(a) As used in this section:

(1) "Bona fide private investigator or bona fide security guard" means an individual lawfully providing services, whether licensed or unlicensed, pursuant to sections 3151 and 3151a of Title 26.

(2) "Female breast" means any portion of the female breast below the top of the areola.

(3) "Circumstances in which a person has a reasonable expectation of privacy" means circumstances in which a reasonable person would believe that his or her intimate areas would not be visible to the public, regardless of whether that person is in a public or private area. This definition includes circumstances in which a person knowingly disrobes in front of another, but does not expect nor give consent for the other person to photograph, film, or record his or her intimate areas.

(4) "Intimate areas" means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of a person.

(5) “Place where a person has a reasonable expectation of privacy” means:

(A) a place in which a reasonable person would believe that he or she could disrobe in privacy, without his or her undressing being viewed by another; or

(B) a place in which a reasonable person would expect to be safe from unwanted intrusion or surveillance.

(6) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

(7) “View” means the intentional looking upon another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or a device designed or intended to improve visual acuity.

(b) No person shall intentionally view, photograph, film, or record in any format:

(1) the intimate areas of another person without that person’s knowledge and consent while the person being viewed, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy; or

(2) the intimate areas of another person without that person’s knowledge and consent and under circumstances in which the person has a reasonable expectation of privacy.

(c) No person shall ~~disseminate~~ display or disclose to a third party any image recorded in violation of subsection (b), (d), or (e) of this section.

(d) No person shall intentionally conduct surveillance or intentionally photograph, film, or record in any format a person without that person’s knowledge and consent while the person being surveilled, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy within a home or residence. Bona fide private investigators and bona fide security guards engaged in otherwise lawful activities within the scope of their employment are exempt from this subsection.

(e) No person shall intentionally photograph, film, or record in any format a person without that person’s knowledge and consent while that person is engaged in a sexual act as defined in section 3251 of this title.

(f) This section shall apply to a person who intentionally views, photographs, films, or records the intimate areas of a person as part of a security or theft prevention policy or program at a place of business.

~~(f)~~(g) This section shall not apply to:

(1) a law enforcement officer conducting official law enforcement activities in accordance with state and federal law; or

(2) official activities of the department of corrections, a law enforcement agency, the agency of human services, or a court for security purposes or during the investigation of alleged misconduct by a person in the custody of the department of corrections, a law enforcement agency, the agency of human services, or a court.

~~(g)~~(h) This section is not intended to infringe upon the freedom of the press to gather and disseminate news as guaranteed by the First Amendment to the Constitution of the United States.

~~(h)~~(i) It shall be an affirmative defense to a violation of subsection (b) of this section that the defendant was a bona fide private investigator or bona fide security guard conducting surveillance in the ordinary course of business, and the violation was unintentional and incidental to otherwise legal surveillance. However, an unintentional and incidental violation of subsection (b) of this section shall not be a defense to a violation of subsection (c).

~~(i)~~(j) For a first offense, a person who violates subsection (b) ~~or~~ (d), or (e) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both. For a second or subsequent offense, a person who violates subsection (b) ~~or~~ (d), or (e) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both. A person who violates subsection (c) of this section shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.

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.

Third Reading Ordered

S. 278.

Senate committee bill entitled:

An act relating to the department of banking, insurance, securities, and health care administration.

Having appeared on the Calendar for notice for one day, was taken up.

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

Message from the House No. 15

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. 220. House concurrent resolution in memory of Dale Long.

H.C.R. 221. House concurrent resolution congratulating Bellows Falls Union High School former girls' basketball coach Jayne Barber on her induction into the New England Basketball Hall of Fame.

H.C.R. 222. House concurrent resolution congratulating the 2009 Rutland Gift-of-Life Marathon.

H.C.R. 223. House concurrent resolution recognizing Wilmer Brandt's commitment to preserving the natural world and promoting social justice as he celebrates his 90th birthday.

H.C.R. 224. House concurrent resolution congratulating the Rice Memorial High School Green Knights 2009 Division III championship field hockey team.

H.C.R. 225. House concurrent resolution congratulating the 2009 Springfield High School Cosmos Division II championship boys' soccer team.

H.C.R. 226. House concurrent resolution congratulating the students and staff of Hartford High School on their creation of the High Five mural.

H.C.R. 227. House concurrent resolution congratulating Bob Kinzel on his receipt of the 2009 Vermont Association of Broadcasters' Distinguished Service Award.

H.C.R. 228. House concurrent resolution congratulating Ray Kimball on his being named a 2009 recipient of the Vermont Association of Broadcasters' Alan Noyes Community Service Award.

H.C.R. 229. House concurrent resolution congratulating Tim Johnson on his receipt of the Vermont Association of Broadcasters' Distinguished Service Award.

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

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 220.

House concurrent resolution in memory of Dale Long.

By Representative Obuchowski and others,

By Senators Shumlin and White,

H.C.R. 221.

House concurrent resolution congratulating Bellows Falls Union High School former girls' basketball coach Jayne Barber on her induction into the New England Basketball Hall of Fame.

By Representative Obuchowski and others,

By Senators Carris, Flory and Mullin,

H.C.R. 222.

House concurrent resolution congratulating the 2009 Rutland Gift-of-Life Marathon.

By Representative Ancel,

H.C.R. 223.

House concurrent resolution recognizing Wilmer Brandt's commitment to preserving the natural world and promoting social justice as he celebrates his 90th birthday.

By Representative Till and others,

By Senators Ashe, Flanagan, Lyons, Miller, Racine and Snelling,

H.C.R. 224.

House concurrent resolution congratulating the Rice Memorial High School Green Knights 2009 Division III championship field hockey team.

By Representative Emmons and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 225.

House concurrent resolution congratulating the 2009 Springfield High School Cosmos Division II championship boys' soccer team.

By Representative Bohi and others,
By Senators Campbell, McCormack and Nitka,

H.C.R. 226.

House concurrent resolution congratulating the students and staff of Hartford High School on their creation of the High Five mural.

By Representative Obuchowski and others,

H.C.R. 227.

House concurrent resolution congratulating Bob Kinzel on his receipt of the 2009 Vermont Association of Broadcasters' Distinguished Service Award.

By Representative Obuchowski and others,
By Senators Campbell, McCormack and Nitka,

H.C.R. 228.

House concurrent resolution congratulating Ray Kimball on his being named a 2009 recipient of the Vermont Association of Broadcasters' Alan Noyes Community Service Award.

By Representative Obuchowski and others,
By Senators Shumlin and White,

H.C.R. 229.

House concurrent resolution congratulating Tim Johnson on his receipt of the Vermont Association of Broadcasters' Distinguished Service Award.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o'clock in the afternoon on Wednesday, February 3, 2010.

WEDNESDAY, FEBRUARY 3, 2010

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the time for convening of the Senate having been set at one o'clock in the afternoon, the Senate was called to order by David A. Gibson, Secretary of the Senate.

Adjournment

At one o'clock and fifteen minutes in the afternoon and no quorum of the Senate having assembled, pursuant to Rule 9 of the Senate Rules on motion of

Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Thursday, February 4, 2010.

THURSDAY, FEBRUARY 4, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 16

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. 46. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

The Governor has informed the House that on the February 2, 2010, he approved and signed a bill originating in the House of the following title:

H. 515. An act relating to LIHEAP income eligibility.

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 281.

By Senator Hartwell,

An act relating to carrying of concealed firearms by qualified retired law enforcement officers.

To the Committee on Judiciary.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 282.

By the Committee on Transportation,

An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

Bills Introduced

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

S. 283.

By Senators Mazza and Scott,

An act relating to amending miscellaneous motor vehicle laws, eliminating the motorcycle rider training program advisory committee, and repealing the interstate compact for motor vehicle safety equipment.

To the Committee on Transportation.

S. 284.

By Senator Flory,

An act relating to express assumption of risk and release from liability.

To the Committee on Judiciary.

S. 285.

By Senator Kittell,

An act relating to authorizing a health insurance purchasing association for farmers.

To the Committee on Agriculture.

Third Reading Ordered**S. 280.**

Senate committee bill entitled:

An act relating to prohibiting texting while operating on a highway.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator Scott moved to amend the bill as follows:

First: In Sec. 1, subsection (c), by striking out the words “for a first conviction” and inserting in lieu thereof the words upon adjudication of a first violation

Second: In Sec. 1, subsection (c), by striking out the words “for a second or subsequent conviction” and inserting in lieu thereof the words upon adjudication of a second or subsequent violation

Third: In Sec. 2, subsection (a), by striking out the fourth sentence in its entirety and inserting in lieu thereof the following:

The commissioner shall also recall any learner’s permit or junior operator’s license for 30 days when an operator is adjudicated of a single texting violation under section 1099 of this title, 90 days following adjudication of a single speeding violation resulting in a three-point assessment or, 90 days when a total of six points has been accumulated, or 90 days when an operator is convicted for adjudicated of a violation of section 678 of this title.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Proposal of Amendment; Bill Passed in Concurrence with Proposals of Amendment

H. 534.

House bill entitled:

An act relating to fiscal year 2010 budget adjustment.

Was taken up.

Thereupon, pending third reading of the bill, Senator Bartlett moved that the Senate propose to the House to amend the bill as follows:

First: By striking out Sec. 46 in its entirety and inserting in lieu there of a new Sec. 46 to read as follows:

Sec. 46. DELETED

Second: In Sec. 49, by striking out the figure “19,115,745” where it appears twice and inserting in lieu thereof the figure 19,094,794 and by striking out the figure “16,361,710” and inserting in lieu thereof the figure 16,340,759 and by striking out the figure “3,043,197” and inserting in lieu there of the figure 3,022,246

Third: In Sec. 50, by striking out the figure “65,354,476” where it appears twice and inserting in lieu thereof the figure 65,333,525 and by striking out the figure “12,715,861” and inserting in lieu thereof the figure 12,694,910

Fourth: By striking out Sec. 64 in its entirety and inserting in lieu thereof a new Sec. 64 to read as follows:

Sec. 64. Sec. 19 of No. 61 of the Acts of 2009 is amended to read:

Sec. 19. 8 V.S.A. § 4080f is amended to read:

§ 4080f. CATAMOUNT HEALTH

(a) As used in this section:

* * *

(II)(aa) A self-employed individual who was insured through the nongroup market whose insurance coverage ended as the direct result of either the termination of a business entity owned by the individual or the individual's inability to continue in his or her line of work, if the individual produces satisfactory evidence to the office of Vermont health access of the business termination or certifies by affidavit to the office of Vermont health access that he or she is not employed and is no longer seeking employment in the same line of work;

(bb) Subdivision (aa) of this subdivision (II) shall take effect upon issuance by the Centers for Medicare and Medicaid Services of approval of an amendment to the Global Commitment for Health Medicaid Section 1115 Waiver allowing for a self-employment exception to the Catamount Health waiting period, but in no event earlier than July 1, 2011;

* * *

Fifth: In Sec. 71, amending Sec. B.1101(b) of No. 1 of the Acts of the 2009 Special Session, by striking out the words "Government Services Fund"

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment on a roll call, Yeas 22, Nays 0.

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, Bartlett, Brock, Choate, Cummings, Doyle, Flory, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

Those Senators absent or not voting were: Ashe, Campbell, Carris, Flanagan, Illuzzi, Miller, Mullin, Shumlin (presiding).

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 187. An act relating to municipal financial audits.

S. 218. An act relating to voyeurism.

Bill Amended; Bill Passed

S. 278.

Senate bill entitled:

An act relating to the department of banking, insurance, securities, and health care administration.

Was taken up.

Thereupon, pending third reading of the bill, Senator Ayer moved to amend the bill in Sec. 28, 8 V.S.A. § 8093(b) by striking out the figure “\$25.00” and inserting in lieu thereof the figure \$15.00

Which was agreed to.

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

Consideration Postponed

Senate bill entitled:

S. 90.

An act relating to representative annual meetings.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Rules Suspended; Bill Messaged

On motion of Senator Mazza, the rules were suspended, and the following bill was ordered messaged to the House forthwith:

H. 534.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the morning.

FRIDAY, FEBRUARY 5, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Lisa Ramson of Moretown.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 286.

By the Committee on Appropriations,
An act relating to challenges for change.

Bill Passed

Senate committee bill entitled:

S. 280. An act relating to prohibiting texting while operating on a highway.
Was taken up.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 25, Nays 0.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Scott, Sears, Snelling, Starr.

Those Senators who voted in the negative were: None.

Those Senators absent and not voting were: Ayer, Flanagan, Racine, Shumlin, White.

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, February 9, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 46.

TUESDAY, FEBRUARY 9, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Mara Dowdall of Montpelier.

Pledge of Allegiance

Pages Haddie Lary and Madelyn McCrae then led the members of the Senate in the pledge of allegiance.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 287.

By the Committee on Finance,

An act relating to the licensing and regulation of loan servicers.

Joint Resolution Referred**J.R.S. 47.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Sears and Hartwell,

J.R.S. 47. Joint resolution strongly urging the Republic of Turkey to recognize the right to religious freedom for all its residents and to end all discriminatory policies directed against the Ecumenical Patriarchate of the Orthodox Church.

Whereas, the Ecumenical Patriarch Bartholomew is the spiritual leader of 300 million Orthodox Christians, is the 269th direct successor of the Apostle Andrew, and heads the second largest church in Christianity, and

Whereas, in the 6th century, the undivided Christian Church bestowed the titles Ecumenical Patriarch and Ecumenical Patriarchate on the Patriarch of Constantinople, and these titles are exclusively spiritual and were never intended to confer any political or secular governance rights in the city of Constantinople (now Istanbul) on the Ecumenical Patriarchate, and

Whereas, since the formation of the Republic of Turkey in 1923, that nation has repeatedly and illegally adopted repressive discriminatory policies against the Ecumenical Patriarchate, including its conduct of religious governance, operation of institutions such as schools and orphanages, and ownership of property, and

Whereas, in 1923, and again in 1970, the Republic of Turkey imposed severe limitations on the fundamental spiritual existence and continuance of the Ecumenical Patriarchate, requiring that both the individual elected to this office, and the Hierarchs (the Metropolitans and Archbishops who elect him) be Turkish citizens, and

Whereas, only 15 of the 40 Hierarchs worldwide in Christian Orthodoxy reside in Turkey, and only two deacons and two priests now working for the Ecumenical Patriarchate are in a position to replace the Hierarchs in the future, and

Whereas, not only is the election of the Ecumenical Patriarch an exclusively spiritual matter that should be totally outside the authority of the Republic of Turkey, but the majority of Orthodox Christians and their religious leaders reside outside Turkey, and

Whereas, the Ecumenical Patriarchate is the first church of Orthodox Christianity worldwide, not just in Turkey, is responsible for worldwide coordination of pan-Orthodox Christian affairs, and serves as the spiritual center for 300 million Orthodox Christians, and

Whereas, in 1971, the government of the Republic of Turkey illegally closed the Theological School of Halki, and

Whereas, the Treaty of Lausanne, signed in 1923, was intended to assure the rights of minorities in Turkey, but the Ecumenical Patriarchate, even though it has existed in Turkey for 1,700 years, lacks any legal status, and

Whereas, a direct corollary of the Ecumenical Patriarchate's lack of legal status in Turkey is a governmental prohibition on its owning property, forcing the creation of an independent minority foundation to own and manage church-related buildings that in normal circumstances would be church-owned, and

Whereas, even with this substitute ownership system, the government confiscation of church-related properties is continuing, and

Whereas, a proposed new law on minority foundations' property rights has involved great secrecy and greatly concerns the Ecumenical Patriarchate, and

Whereas, even the ownership of churches has now been threatened because there are insufficient numbers of church members residing in the immediate area of a church, and

Whereas, the Republic of Turkey's refusal to grant work permits to foreigners has greatly impeded the daily activities of the Ecumenical Patriarchate, forcing clergy and lay individuals to leave the country regularly and reapply for admission, and

Whereas, in 2005, a panel of leading Christian and Jewish clergy testified before the congressional Helsinki Commission on the threat to Orthodox Christianity because of the Republic of Turkey's denial of the Ecumenical Patriarchate's basic human rights, and

Whereas, a record number of cosponsors supported the awarding of the Congressional Gold Medal to Ecumenical Patriarch Bartholomew, an award which has a distinguished historic recipient list, and

Whereas, the Republic of Turkey is seeking admission to the European Union, and refusing to grant human and legal rights to the Ecumenical Patriarchate is contrary to the EU-Turkey 2003 Accession Partnership, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly strongly urges the Republic of Turkey to recognize the right to religious freedom for all its residents and to end all discriminatory policies directed against the Ecumenical Patriarchate of the Orthodox Church, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Embassy of the Republic of Turkey in Washington, D.C., the Order of Saint Andrew the Apostle Archons of the Ecumenical Patriarchate in New York City, and the Vermont congressional delegation.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Economic Development, Housing and General Affairs.

Joint 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 Shumlin,

J.R.S. 48. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 12, 2010, it be to meet again no later than Tuesday, February 16, 2010.

Bill Amended; Third Reading Ordered

S. 90.

Senator Doyle, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to representative annual meetings.

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

Sec. 1. 17 V.S.A. § 2640a is added to read:

§ 2640a. REPRESENTATIVE ANNUAL MEETINGS

(a) A municipality with a population of 5,000 or greater may vote at a special or annual town meeting to establish a representative form of annual or special meeting.

(b) A representative form of annual or special meeting is a meeting of members elected by district to exercise exclusively all powers vested in the voters of the town. At a representative annual or special meeting, the members shall act upon all articles on the warning except those which relate to the election of officers, referenda, and other matters voted upon by Australian ballot.

(c) A vote to establish a representative form of annual or special meeting shall include a vote to establish:

(1) a certain number of elected members, a range of elected members, or a ratio of elected members to the number of voters. However, in no case shall the number of elected members be less than 100;

(2) a certain number of districts and the boundaries of those districts;

(3) who shall be ex officio voting members of the meeting;

(4) the procedure for accomplishing the representative meeting;

(5) any specific action to be taken at the representative meeting; and

(6) a procedure whereby the voters of the municipality may reconsider any action taken at a representative meeting.

(d) A vote establishing a representative form of annual or special meeting shall remain in effect until the municipality votes to discontinue or establish a new representative form of annual or special meeting at an annual or special meeting duly warned for that purpose.

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.

Consideration Postponed

Senate bill entitled:

S. 282.

An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Rules Suspended; Third Reading Ordered

S. 286.

Appearing on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and Senate committee bill entitled:

An act relating to challenges for change.

Was taken up for immediate consideration.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered on a roll call, Yeas 28, Nays 1.

Senator Shumlin 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, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

The Senator who voted in the negative was: McCormack.

The Senator absent and not voting was: Giard.

Senate Concurrent Resolutions

The following joint concurrent resolutions, 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, are hereby adopted on the part of the Senate:

By Senators Flory, Campbell, Carris, Doyle, Illuzzi, Mullin, Nitka and Snelling,

By Representative Acinapura and others,

S.C.R. 37.

Senate concurrent resolution in memory of Joan Wing.

By Senators Doyle, Cummings and Scott,

By Representative Klein,

S.C.R. 38.

Senate concurrent resolution congratulating Winona Greaves of Montpelier on her 100th birthday.

By Senators Kitchel, Choate, Campbell, McCormack and Nitka,

By Representative South and others,

S.C.R. 39.

Senate concurrent resolution in memory of Vermont artist Stephen Huneck of St. Johnsbury.

By Senators Doyle, Cummings and Scott,

S.C.R. 40.

Senate concurrent resolution honoring Good Beginnings of Central Vermont and its outstanding volunteer support programs for families of newborn and adopted infants.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o'clock in the afternoon on Wednesday, February 10, 2010.

WEDNESDAY, FEBRUARY 10, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 17

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. 163. An act relating to technical corrections to 2009 sex offender legislation.

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. 534. An act relating to fiscal year 2010 budget adjustment.

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 adopted House concurrent resolutions of the following titles:

H.C.R. 230. House concurrent resolution congratulating the 2009 Windsor High School Yellow Jackets Division III championship football team.

H.C.R. 231. House concurrent resolution honoring Tanner Dow for his artistic and literary accomplishments.

H.C.R. 232. House concurrent resolution in memory of Representative Richard Hube of Londonderry.

H.C.R. 233. House concurrent resolution congratulating the Windsor High School Yellow Jackets 2009 Division II field hockey championship team.

H.C.R. 234. House concurrent resolution congratulating the Shelburne Community School Wind Ensemble on its selection as a participant in the 25th annual Walt Disney World's Magic Music Days.

H.C.R. 235. House concurrent resolution congratulating Front Porch Forum, Inc. on its 10th anniversary.

H.C.R. 236. House concurrent resolution honoring Brittany Gilbert for her remarkable humanitarian work in Haiti.

H.C.R. 237. House concurrent resolution congratulating all Vermonters competing for the United States in the 2010 Olympics in British Columbia.

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

The House has considered concurrent resolutions originating in the Senate of the following titles:

S.C.R. 37. Senate concurrent resolution in memory of Joan Wing.

S.C.R. 38. Senate concurrent resolution congratulating Winona Greaves of Montpelier on her 100th birthday.

S.C.R. 39. Senate concurrent resolution in memory of Vermont artist Stephen Huneck of St. Johnsbury.

S.C.R. 40. Senate concurrent resolution honoring Good Beginnings of Central Vermont and its outstanding volunteer support programs for families of newborn and adopted infants.

And has adopted the same in concurrence.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 286. An act relating to challenges for change.

S. 90. An act relating to representative annual meetings.

Bill Amended; Third Reading Ordered

S. 282.

Senate committee bill entitled:

An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator Kitchel moved to amend the bill by adding a new section to be numbered Sec. 12 to read as follows:

Sec. 12. EFFECTIVE DATES

(a) Sec. 3 (renewal) shall take effect on July 1, 2011.

(b) This section, Secs. 1–2, and Secs. 4–11 shall take effect on July 1, 2010.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Rules Suspended; Bills Messaged

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

S. 90; S. 286.

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By Representative Sweaney and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 230.

House concurrent resolution congratulating the 2009 Windsor High School Yellow Jackets Division III championship football team.

By Representative Sweaney and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 231.

House concurrent resolution honoring Tanner Dow for his artistic and literary accomplishments.

By All Members of the House,

By All Members of the Senate,

H.C.R. 232.

House concurrent resolution in memory of Representative Richard Hube of Londonderry.

By Representative Sweaney and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 233.

House concurrent resolution congratulating the Windsor High School Yellow Jackets 2009 Division II field hockey championship team.

By Representatives Lenes and Webb,

H.C.R. 234.

House concurrent resolution congratulating the Shelburne Community School Wind Ensemble on its selection as a participant in the 25th annual Walt Disney World's Magic Music Days.

By Representative Wizowaty and others,

H.C.R. 235.

House concurrent resolution congratulating Front Porch Forum, Inc. on its 10th anniversary.

By Representative O'Donnell,

H.C.R. 236.

House concurrent resolution honoring Brittany Gilbert for her remarkable humanitarian work in Haiti.

By All Members of the House,

By All Members of the Senate,

H.C.R. 237.

House concurrent resolution congratulating all Vermonters competing for the United States in the 2010 Olympics in British Columbia.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, February 12, 2010.

FRIDAY, FEBRUARY 12, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Melvin Bridge of Waterbury.

Message from the House No. 18

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 joint resolution of the following title:

J.R.H. 36. Joint resolution urging Congress to create a cleaner and greener standard for heating oil in the Northeast and to extend the federal tax credit for biodiesel fuel.

In the adoption 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. 48. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 19

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. 507. An act relating to fostering connections to success in guardianships.

H. 517. An act relating to approval of an amendment to the charter of the Village of Enosburg Falls.

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

The House has adopted joint resolution of the following title:

J.R.H. 38. Joint resolution relating to the use of the state house for the Green Mountain Boys' State Program.

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

Pages Honored

In appreciation of their many services to the members of the General Assembly, the President recognized the following-named pages who are completing their services today and presented them with commemorative posters:

Sam Biondolillo of Barre
Clara Emlen of Calais
Ira Fisher of Lincoln
Leah Hanzas of Bradford

Haddie Lary of Randolph
Madelyn McCrae of South Burlington
Hunter Riehle of South Burlington
Clare Salerno of Johnson
Nell Sather of Montpelier
Erin Turner of Milton

Bills Referred

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

H. 507.

An act relating to fostering connections to success in guardianships.

To the Committee on Health and Welfare.

H. 517.

An act relating to approval of an amendment to the charter of the Village of Enosburg Falls.

To the Committee on Government Operations.

Joint Resolution Referred

J.R.H. 36.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging Congress to create a cleaner and greener standard for heating oil in the Northeast and to extend the federal tax credit for biodiesel fuel.

Whereas, more than one-half of the homes in Vermont are heated with heating oil, and

Whereas, an ultra-low sulfur standard for heating oil would dramatically cut air emissions while reducing both maintenance costs and consumption, and

Whereas, an ultra-low sulfur fuel standard would allow consumers to utilize more efficient heating oil furnaces and boilers, and

Whereas, heating oil that is blended with up to five percent biodiesel can be used in existing appliances that use heating oil, and

Whereas, an increase in the use of heating oil blended with biodiesel would result in reduced dependence on fossil fuels and foreign oil, and

Whereas, the environmental benefits of ultra-low sulfur diesel and biodiesel blends for space heating are beneficial in reducing both particulate matter and greenhouse gas emissions, and

Whereas, the adoption of a uniform standard for ultra-low sulfur diesel and biodiesel blends in the Northeast region – defined as the group of states consisting of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont – would encourage a market for cleaner and greener heating oil that is more efficient and economical for suppliers and consumers, and

Whereas, the extension of the biodiesel tax credit would increase biodiesel production and allow Vermont farmers to develop the feed stocks and capacity to supply biodiesel to Vermont oil heat retailers, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to: (a) create a uniform heating oil standard for the Northeast states identified in this resolution that requires an ultra-low sulfur distillate fuel blended with up to five percent biodiesel; and (b) extend the \$1 per gallon biodiesel federal tax credit that expired on December 31, 2009, and be it further

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

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Natural Resources and Energy.

Joint Resolution Placed on Calendar

J.R.H. 38.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution relating to the use of the state house for the Green Mountain Boys' State Program.

Whereas, the Green Mountain Boys' State Program brings together high school boys from all areas of Vermont to our capital city in order to view and experience firsthand the workings of state government, and

Whereas, the lessons these students learn at Boys' State Program make a significant contribution to their future growth as valuable citizens and leaders of our state, now therefore be it

Resolved by the Senate and House of Representatives:

That the Sergeant at Arms shall make available the House and Senate chambers and all committee and meeting rooms of the state house for the Green Mountain Boys' State Program on Thursday, June 24, 2010, from 8:00 a.m. to 4:15 p.m.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Senate Resolution Adopted

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

By the Committee on Agriculture,

S.R. 18. Senate resolution urgently imploring United States Secretary of Agriculture Tom Vilsack to exercise dynamic and innovative leadership in addressing the volatility in the price of milk paid to Vermont's dairy farmers.

Whereas, the federal marketing order system no longer works for Vermont dairy farmers, and

Whereas, the price of milk is consistently below the price of production and is a major cause in the decline in the number of Vermont dairy farms, and

Whereas, according to the Vermont Agency of Agriculture, Food and Markets, the total number of dairy farms in January of each of the following years stood at: 1947 (11,206), 1957 (9,512), 1967 (4,729), 1977 (3,531), 1987 (2,771), 1997 (1,908), 2007 (1,168), and 2010 (1,055), and

Whereas, if the statistical dairy farm closure rate of the last two decades continues, by the year 2020 Vermont dairy farms will have nearly vanished from the countryside, and

Whereas, the state of Vermont has attempted through various programs, including initiating a regional dairy compact, to revitalize the Vermont Milk Commission, and to provide scientific and business assistance directly to individual farmers, and through agricultural organizations to help create a fair price for the milk that Vermont dairy farmers produce, and

Whereas, this pricing problem not only is an ongoing crisis for our dairy farmers, but also it is national in scope and can be addressed only through federal leadership which takes into consideration policy proposals that come from the grass roots level, and

Whereas, on Saturday, February 13, 2010, United States Secretary of Agriculture Tom Vilsack will be visiting our state, affording Vermont's dairy farmers and the members of the Vermont Senate the opportunity to express

frustration and deep concern regarding the future of Vermont's dairy industry, a major economic driver of our state, and

Whereas, this expression will be a way of recognizing and protecting our agricultural heritage and working landscape, *now therefore be it*

Resolved by the Senate:

That the Senate of the State of Vermont welcomes United States Secretary of Agriculture Tom Vilsack to Vermont and urgently implores him to exercise dynamic and innovative leadership in addressing the volatility in the price of milk paid to Vermont's dairy farmers, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to United States Secretary of Agriculture Tom Vilsack.

Message from the Governor

Appointments Referred

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

Hayward, Robert G., M.D. of Shelburne - Member of the Board of Medical Practice, - from February 1, 2010, to December 31, 2013.

To the Committee on Health and Welfare.

Tarrant, Lori of Colchester - Member of the Board of Medical Practice, - from February 1, 2010, to December 31, 2011.

To the Committee on Health and Welfare.

Clauss, David W., M.D. of Shelburne - Member of the Board of Medical Practice, - from February 1, 2010, to December 31, 2014.

To the Committee on Health and Welfare.

King, Patricia A., M.D. of Burlington - Member of the Board of Medical Practice, - from February 1, 2010, to December 31, 2014.

To the Committee on Health and Welfare.

Plavin, Joshua A., M.D. of Randolph - Member of the Board of Medical Practice, - from February 1, 2010, to December 31, 2014.

To the Committee on Health and Welfare.

Hoser, William K., PA-C of Chester - Member of the Board of Medical Practice, - from February 1, 2010, to December 31, 2014.

To the Committee on Health and Welfare.

Valente, John W. of Rutland - Director of the Vermont Municipal Bond Bank, - from February 1, 2010, to January 31, 2012.

To the Committee on Finance.

Kimel David R. of St. Albans - Director of the Vermont Municipal Bond Bank, - from February 1, 2010, to January 31, 2012.

To the Committee on Finance.

Young, Sheri B. of Orwell - Member of the Vermont Citizens Advisory Committee on Lake Champlain's Future, - from February 4, 2010, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Bentley, Bruce of Rutland - Member of the Vermont Natural Gas and Oil Resources Board, - from February 10, 2010, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Morse, Eva of Calais - Member of the Current Use Advisory Board, - from February 9, 2010, to January 31, 2013.

To the Committee on Natural Resources and Energy.

Rowell, Laurie of Saxtons River - Member and Chair of the Valuation Appeals Board, - from February 9, 2010, to January 31, 2013.

To the Committee on Finance.

Volk, Randall of Hinesburg - Member of the Current Use Advisory Board, - from February 10, 2010, to January 31, 2013.

To the Committee on Natural Resources and Energy.

Bill Passed

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

S. 282. An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

Third Reading Ordered

S. 287.

Senate committee bill entitled:

An act relating to the licensing and regulation of loan servicers.

Having appeared on the Calendar for notice for one day, was taken up.

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

Proposals of Amendment; Third Reading Ordered**H. 331.**

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

An act relating to technical changes to the records management authority of the Vermont State Archives and Records Administration.

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

First: By striking out Sec. 14 in its entirety and inserting in lieu thereof the following:

Sec. 14. 32 V.S.A. § 1712(5) is amended to read:

(5) Fees for vital records shall be equivalent to those received by the commissioner of health or the ~~commissioner of buildings and general services~~ Vermont state archivist pursuant to subsection 1715(a) of this title.

Second: By adding three new sections to be numbered Secs. 15, 16, and 17 to read as follows:

Sec. 15. 24 V.S.A. § 1161(a)(2) is amended to read:

(2) If the instrument is executed on behalf of, or to convey the interest of another party, the same shall be indexed in the name of the other party as grantor. In case the instrument is executed by more than one grantor and to more than one grantee, the name of each grantor and each grantee shall be indexed. When the party is a natural person the name shall be indexed under the first letter of such person's surname, and when the party is a corporation the name shall be indexed under the first letter of the first word of its name disregarding articles and initials. For purposes of this section, a defendant against whose property a writ of attachment is filed or a person against whose property a lien is asserted, shall be considered a grantor, and a plaintiff filing a writ, or a person asserting a lien shall be considered a grantee. ~~Land plats filed in the office shall be indexed in such manner as the state archivist shall by rule prescribe.~~ The general index may be kept electronically.

Sec. 16. 18 V.S.A. § 5008 is amended to read:

§ 5008. TOWN CLERK; RECORDING AND INDEXING PROCEDURES

A town clerk shall file for record and index in volumes all certificates and permits received ~~in a manner prescribed by the state archivist~~ town. Each volume or series shall contain an alphabetical index. Civil marriage certificates shall be filed for record in one volume or series, civil unions in

another, birth certificates in another, and death certificates and burial-transit and removal permits in another. However, in a town having less than 500 inhabitants, the town clerk may cause civil marriage, civil union, birth, and death certificates, and burial-transit and removal permits to be filed for record in one volume, provided that none of such volumes shall contain more than 250 certificates and permits. All volumes shall be maintained in the town clerk's office as permanent records.

Sec. 17. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

* * *

(39) records held by the agency of human services or the department of banking, insurance, securities, and health care administration, which include prescription information containing patient-identifiable data, that could be used to identify a patient;

(40) records maintained by a Vermont public postsecondary educational institution and its institutionally related foundations concerning donors or potential donors, including: the identity of a donor or prospective donor when the donor or prospective donor requests anonymity as a condition of making the gift; and a donor or prospective donor's personal, marital, familial, financial, tax, estate planning, or gift planning information, provided that:

(A) "donor" within the meaning of this subdivision shall mean a:

(i) natural person;

(ii) private charitable foundation or trust named for a natural person or persons; or

(iii) donor-advised fund, as defined by 26 U.S.C. § 4966(d)(2) of the Internal Revenue Code, when the person holding advisory privileges for the fund is a natural person or is unknown to the postsecondary educational institution;

(B) this subdivision does not apply to benefactors of grants or contracts to the institution for the performance of research;

(C) disclosure shall be required of the purpose, date, amount, and any donor-imposed restrictions on the use of the donation; and

(D) the name of any donor and the amount of a donation made by such donor shall be subject to disclosure if the donor transacts business with the educational institution within three years before or after the date of such donation. For purposes of this subdivision, to "transact business" means the

sale or lease of property, goods, or services to the institution in an amount greater than \$10,000.00 in aggregate in a calendar year by the donor, the donor's immediate family, or a business in which the donor is an officer or has a direct ownership interest of greater than five percent of the assets or stock of the business.

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 pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Government Operations?, Senator White on behalf of the Committee on Government Operations, moved to amend the proposal of amendment of the Committee on Government Operations as follows:

First: In Sec. 17, 1 V.S.A. § 317(c)(40), by striking out the following: “and its institutionally related foundations” where it appears and inserting in lieu thereof the following: , the Vermont Student Assistance Corporation, or the institutionally related foundations of public postsecondary education institutions or of the Vermont Student Assistance Corporation

Second: By adding a new section to be numbered Sec. 18 to read as follows:

Sec. 18. EFFECTIVE DATE

This act shall take effect upon passage.

Thereupon, the question, Shall the proposal of amendment of the Committee on Government Operations, be amended as recommended by Senator White on behalf of the Committee on Government Operations?, was agreed to.

Thereupon, the proposals of amendment recommended by the Committee on Government Operations, as amended, were agreed to and third reading of the bill was ordered.

Consideration Postponed

Senate bill entitled:

S. 163.

An act relating to technical corrections to 2009 sex offender legislation.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

**House Proposal of Amendment to Senate Proposal of Amendment
Concurred In**

H. 534.

House proposal of amendment to Senate proposal of amendment to House bill entitled:

An act relating to fiscal year 2010 budget adjustment.

Was taken up.

The House proposes to the Senate to amend the bill by striking out the Fifteenth (emergency housing funding) Senate proposal of amendment.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, February 16, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 48.

TUESDAY, FEBRUARY 16, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

Pledge of Allegiance

Pages Johannah Mitchell and Brian Renfro then led the members of the Senate in the pledge of allegiance.

Message from the House No. 20

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 joint resolution of the following title:

J.R.H. 34. Joint resolution in support of the New England Secondary School Consortium.

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

Committee Bill Introduced; Rules Suspended; Bill Committed

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 288.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to the Vermont recovery and reinvestment act of 2010.

Thereupon, pending entry of the bill on the Calendar for notice the next legislative day, on motion of Senator Shumlin, the rules were suspended and the bill was taken up for immediate consideration.

Thereupon, pending second reading of the bill, on motion of Senator Shumlin, the bill was committed to the Committee on Finance.

Senator Shumlin Assumes the Chair**Joint 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 Shumlin,

J.R.S. 49. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 19, 2010, it be to meet again no later than Tuesday, February 23, 2010.

Joint Resolution Referred**J.R.H. 34.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution in support of the New England Secondary School Consortium.

Whereas, the New England Secondary School Consortium—a multistate partnership forged to promote and advance higher educational aspirations, performance, and attainment among the adolescents of Connecticut, Maine, New Hampshire, Rhode Island, and Vermont—has been and will continue to be a force for enhancing the quality of Vermont's system of public secondary education, and

Whereas, Vermont must transform—from its state house to its schoolhouses—educational policies, assessment practices, teaching strategies, professional development, and state and local leadership to ensure that the educational achievement of its students will be competitive with that of their peers across New England and the globe and that every student will graduate prepared for success in the colleges, careers, and communities of the 21st century, and

Whereas, education and high levels of postsecondary-degree attainment are critical to workforce development, job creation, and sustainable, long-term economic prosperity in the 21st century, and

Whereas, it is critical that Vermont strive to improve educational quality, opportunity, and efficacy for its citizens through regional collaboration, resource sharing, expertise exchange, and cross-state student performance and achievement comparability, and

Whereas, the consortium is developing: (1) internationally competitive educational models and instructional programs at the secondary level that will redefine the traditional concept of the public high school to more effectively mirror the lives and learning needs of today's students; (2) learning standards that reflect the ways in which our students will live, work, learn, and lead in the 21st century; (3) new state and local policies designed to stimulate educational innovation and creativity; and (4) performance assessments that can more accurately measure the essential academic knowledge and critical life skills that Vermont students will apply throughout their lives and across all educational, career, and civic contexts, and

Whereas, the New England states share similar histories, demographic populations, interdependent economic prospects, and educational and social challenges, and

Whereas, the independent and collective interests of our states can be more effectively served through strategic partnerships that can improve the educational, career, and life outcomes of our citizens, and

Whereas, the consortium is fostering a coordinated regional effort to build broad-based support for its major initiatives among educators, policy-makers, and business leaders while also engaging parents and community members in the educational process through local school involvement, positive messaging, community outreach, and cross-state networking, and

Whereas, innovative regional collaborations have the potential to attract significant public and private investments, create a more highly skilled workforce, attract new economic opportunities, drive sustained economic

growth, and improve the quality of life for all Vermont residents, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly expresses its strong support and endorsement of the New England Secondary School Consortium and its mission, goals, and strategies, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Governor James Douglas, Commissioner of Education Armando Vilaseca, the commissioners of education for Connecticut, Maine, New Hampshire, and Rhode Island; the executive director of the Great Schools Partnership; the president of the Nellie Mae Education Foundation; and the director of education for the Bill & Melinda Gates Foundation.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Education.

Bill Passed

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

S. 287. An act relating to the licensing and regulation of loan servicers.

Further Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment

H. 331.

House bill entitled:

An act relating to technical changes to the records management authority of the Vermont State Archives and Records Administration.

Was taken up.

Thereupon, pending third reading of the bill, Senator White, moved that the Senate further propose to the House to amend the bill by striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. 27 V.S.A. § 1403(b) is amended to read:

(b) Plats filed in accordance with this chapter shall also conform with the following further requirements:

(1) ~~Plat sheet materials and the inscriptions and drawings thereon shall conform with material specifications determined by the commissioner of~~

~~buildings and general services, and shall be chosen for their permanency and clarity.~~

(2) Each survey plat shall contain an inset locus map clearly indicating the location of the land depicted and a legend of symbols used.

(3) All lettering and data shall be clearly legible.

(4) Plat scale ratios shall be sufficient to allow all pertinent survey data to be shown, and each plat shall contain a graphic scale graduated in units of measure used in the body of the plat.

(5) Each plat sheet shall have a minimum one-half inch margin, except the binder side, which shall have a minimum one and one-half inch margin.

(6) Each plat sheet shall contain a title area in the lower right-hand corner of the sheet stating the location of the land, scale expressed in engineering units, date of compilation, the name of the record owner as of that date, the land surveyor's certification as outlined in section 2596 of Title 26, and a certification that the plat conforms with requirements of this section. These certifications shall be accompanied by the responsible land surveyor's seal, name and number, and signature.

(7) Each survey plat shall contain a graphical indication of the reference meridian used on the survey plat and a statement describing the basis of bearings referenced on the survey plat.

(8) When the plat sheet is produced by a reproduction process, the process shall be identified and certified to by the producer in the margin of the plat sheet. ~~The methods of reproduction and certification shall be determined by the commissioner of buildings and general services.~~ Original plat sheets shall be so identified and certified to by the same process.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Proposal of Amendment; Third Reading Ordered

H. 533.

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

An act relating to military parents' rights.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The Vermont general assembly finds that:

(1) The military population in our state exceeds 5,000 Vermonters, a majority of whom serve a traditional part-time role. Many of these service members are parents to children under the age of 18.

(2) The mobilization of these military parents, with sometimes little advance notice, can have a disruptive effect on custody or visitation arrangements involving minor children.

(3) It is in the best interests of these children to minimize the loss of parental contact and disruption of the family that results from the service member's absence pursuant to military orders due to temporary duty performed outside the state, deployment, or mobilization.

(4) It is important to maintain parent-child contact as much as feasible when the child's parent is absent due to military orders.

(5) It is in the best interests of these children for the courts to address the military membership of one or both parents at the time of the initial custodial order or anytime thereafter, regardless of whether the service member has temporary duty orders or a deployment or mobilization order.

(6) The regular scheduling of hearings may be harmful to the interest of service members who, due to military orders, may need an expedited hearing or may need to use electronic means to give testimony when they cannot appear in person in court.

(7) The use of expedited hearings and testimony by electronic means, at the request of the service member who is absent or about to depart, would aid and promote fair, efficient, and prompt judicial processes for the resolution of family law matters.

Sec. 2. 15 V.S.A. chapter 11, subchapter 4a is added to read:

Subchapter 4a. Military Parents' Rights Act

§ 681. DEFINITIONS

As used in this subchapter:

(1) "Deploy" and "deployment" mean military service in compliance with military orders received by a member of the United States Armed Forces, including any reserve component thereof to report for combat operations,

contingency operations, peacekeeping operations, a remote tour of duty, or other active service for which the deploying parent is required to report unaccompanied by any family member. Deployment includes a period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful cause.

(2) “Deploying parent” means a military parent who has been notified by military leadership that he or she will deploy or mobilize with the United States Armed Forces, including any reserve component thereof, or who is currently deployed or mobilized with the United States Armed Forces, including any reserve component thereof. “Nondeploying parent” means a parent who is either not a member of the United States Armed Forces, including any reserve component thereof, or is a military parent who is currently not a deploying parent.

(3) “Military parent” means a natural parent, adoptive parent, or legal parent of a child under the age of 18 whose parental rights have not been terminated or transferred to the state or another person through a juvenile proceeding pursuant to chapter 53 of Title 33 or guardianship pursuant to chapter 111 of Title 14 by a court of competent jurisdiction, and who is a member of the United States Armed Forces, including any reserve component thereof.

(4) “Mobilization” and “mobilize” mean the call-up of National Guard or Reserve service members to extended active service. For purposes of this definition, “mobilization” does not include National Guard or reserve annual training, inactive duty days, drill weekends, temporary duty, or state active duty.

(5) “State active duty” means the call-up by a governor for the performance of any military duty in state status.

(6) “Temporary duty” means the transfer of a service member to a geographic location outside Vermont for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

§ 682. FINAL ORDER; MODIFICATION

(a) If a deploying parent is required to be separated from a child as a result of deployment, a court shall not enter a final order modifying parental rights and responsibilities and parent-child contact in an existing order until 90 days after the deployment ends, unless such modification is agreed to by the deploying parent.

(b) Absence created by deployment or mobilization or the potential for future deployment or mobilization shall not be the sole factor supporting a real, substantial, and unanticipated change in circumstances pursuant to section 668 of this title.

§ 683. TEMPORARY MODIFICATION

(a) Upon motion of a deploying or nondeploying parent, the court shall enter a temporary order modifying parental rights and responsibilities or parent-child contact during the period of deployment or mobilization when:

(1) a military parent who has shared, sole, or primary legal or physical parental rights and responsibilities for a child or who has parent-child contact pursuant to an existing court order has received notice from military leadership that he or she will deploy or mobilize in the near future; and

(2) the deployment or mobilization would have a material effect upon his or her ability to exercise such parental rights and responsibilities or parent-child contact.

(b) Motions for modification because of deployment shall be heard by the court as expeditiously as possible, and shall be a priority for this purpose.

(c)(1) All temporary modification orders shall include a specific transition schedule to facilitate a return to the predeployment order over the shortest reasonable time period after the deployment ends, taking into consideration the child's best interests.

(2) The temporary order shall set a date certain for the end of deployment and the start of the transition period. If deployment is extended, the temporary order shall remain in effect during the extended deployment, and the transition schedule shall take effect at the end of the extended deployment. In that case, the nondeployed parent shall notify the court of the extended deployment. Failure of the nondeployed parent to notify the court in accordance with this subdivision shall not prejudice the deployed parent's right to return to the prior order once the temporary order expires as provided in subdivision (3) of this subsection.

(3) The temporary order shall expire upon the completion of the transition, and the prior order for parental rights and responsibilities and parent-child contact shall be in effect.

(d) Upon motion of the deploying parent, the court may delegate his or her parent-child contact rights, or a portion of them, to a family member, a person with whom the deploying parent cohabits, or another person with a close and substantial relationship to the minor child or children for the duration of the deployment, upon a finding that it is in the child's best interests. Such

delegated contact does not create separate rights to parent-child contact for a person other than a parent once the temporary order is no longer in effect.

(e) A temporary modification order issued pursuant to this section shall designate the deploying parent's parental rights and responsibilities for and parent-child contact with a child during a period of leave granted to the deploying parent, in the best interests of the child.

(f) A temporary order issued under this section may require any of the following if the court finds that it is in the best interests of the child:

(1) The nondeploying parent shall make the child reasonably available to the deploying parent when the deploying parent has leave.

(2) The nondeploying parent shall facilitate opportunities for telephonic, electronic mail, and other such contact between the deploying parent and the child during deployment.

(3) The deploying parent shall provide timely information regarding his or her leave schedule to the nondeploying parent. Actual leave dates are subject to change with little notice due to military necessity and shall not be used by the nondeploying parent to prevent parent-child contact.

(g) A court order modifying a previous order for parental rights and responsibilities or parent-child contact because of deployment shall specify that the deployment is the basis for the order, and it shall be entered by the court as a temporary order. The order shall further require the nondeploying parent to provide the court and the deploying parent with 30 days' advance written notice of any change of address and any change of telephone number.

§ 684. EMERGENCY MOTION TO MODIFY; PERMANENT MODIFICATION

(a) Upon the return of the deploying parent, either parent may file a motion to modify the temporary order on the grounds that compliance with the order will result in immediate danger of irreparable harm to the child, and may request that the court issue an ex parte order. The deploying parent may file such a motion prior to his or her return. The motion shall be accompanied by an affidavit in support of the requested order. Upon a finding of irreparable harm based on the facts set forth in the affidavit, the court may issue an ex parte order modifying parental rights and responsibilities and parent-child contact. If the court issues an ex parte order, the court shall set the matter for hearing within ten days from the issuance of the order.

(b) Nothing in this chapter shall preclude the court from hearing a motion for permanent modification of parental rights and responsibilities or parent-child contact prior to or upon return of the deploying parent. The

moving party shall bear the burden of showing a real, substantial, and unanticipated change in circumstances and that resumption of the parental rights and responsibilities or parent-child order in effect before the deployment is no longer in the child's best interests. Absence created by deployment or mobilization or the potential for future deployment or mobilization shall not be the sole factor supporting a real, substantial, and unanticipated change in circumstances pursuant to section 668 of this title.

§ 685. TESTIMONY AND EVIDENCE

Upon motion of a deploying parent, provided reasonable advance notice is given and good cause shown, the court shall allow such parent to present testimony and evidence by electronic means with respect to parental rights and responsibilities or parent-child contact matters instituted under this section when the deployment of that parent has a material effect on his or her ability to appear in person at a regularly scheduled hearing. The phrase "electronic means" includes communication by telephone or video teleconference.

§ 686. NO EXISTING FINAL ORDER

(a) If there is no existing order establishing the terms of parental rights and responsibilities or parent-child contact and it appears that deployment or mobilization is imminent, upon an action filed under this chapter by either parent, the court shall expedite a hearing to establish temporary parental rights and responsibilities and parent-child contact to ensure the deploying parent has access to the child, to ensure disclosure of information, to grant other rights and duties set forth herein, and to provide other appropriate relief.

(b) Any initial pleading filed to establish parental rights and responsibilities for or parent-child contact with a child of a deploying parent shall be so identified at the time of filing by stating in the text of the pleading the specific facts related to deployment.

§ 687. DUTY TO COOPERATE AND DISCLOSE INFORMATION

(a) Because military necessity may preclude court adjudication before deployment, the parties shall cooperate with each other in an effort to reach a mutually agreeable resolution of parental rights and responsibilities, parent-child contact, and child support. Each party shall provide information to the other in an effort to facilitate agreement on these issues.

(b) Within 14 days of receiving notification of deployment or mobilization in the near future from his or her military leadership, the military parent shall provide written notice to the nondeploying parent of the same. If less than 14 days' notice is received by the military parent then notice must be given immediately upon receipt of notice to the nondeploying parent.

§ 688. FAILURE TO EXERCISE PARENT-CHILD CONTACT RIGHTS

In determining whether a parent has failed to exercise parent-child contact, the court shall not count any time periods during which the parent did not exercise such contact due to the material effect of that parent's military duties on the contact schedule.

§ 689. ATTORNEY FEES

In making determinations pursuant to this subchapter, the court may award attorney's fees and costs based on the court's consideration of:

(1) Unreasonable failure of either party to accommodate the other party in parental rights and responsibilities or parent-child contact matters related to a deploying parent. A parent's refusal to accommodate the other parent shall not be considered unreasonable if the parent demonstrates a reasonable fear for his or her safety or the safety of his or her child.

(2) Unreasonable delay caused by either party in resolving parental rights and responsibilities or parent-child contact related to a deploying parent.

(3) Failure of either party to provide timely information about income and earnings information to the other party.

(4) Other factors as the court may consider appropriate and as may be required by law.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

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

House Proposal of Amendment Concurred In**S. 163.**

House proposal of amendment to Senate bill entitled:

An act relating to technical corrections to 2009 sex offender legislation.

Was taken up.

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

Sec. 1. Rule 15 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 15. DEPOSITIONS

* * *

(f) Protection of Deponents.

(1) Deponent's Counsel and Victim Advocate. A deponent may have counsel present at the deposition and may make legal objections to questions. The deponent shall be treated as a party at hearings on motions pertaining to the deposition. A victim of an alleged crime may have a victim advocate present during the deposition. The deponent may apply to the court for a protective order if the deponent believes that he or she is being subjected to harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or other notice of the deposition given to the deponent, shall include notice that the deponent may have the assistance of counsel and the victim advocate as provided herein and seek a protective order as provided in subdivision (f)(3).

(2) Depositions of Sensitive Witnesses. A person under the age of 16 or any person who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and lascivious conduct), 2602 (lewd and lascivious conduct with a minor), 3252 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a sensitive witness. Prior to taking the deposition of a sensitive witness, the party seeking to take the deposition shall consult with the other parties and the deponent in an effort to reach an agreement on the time, place, manner, and scope of the taking of the deposition. If an agreement cannot be reached, the party seeking to take the deposition shall so advise the court and specify the matters which are in dispute. The court shall then issue an order regulating the taking of the deposition, including, in its discretion, a requirement that the deposition be taken in the presence of a judge or special master. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking a deposition proposes to ask about information that falls within 13 V.S.A. § 3255(a)(3)(A)–(C), the party shall notify the other parties and the deponent of this intent prior to seeking agreement on the scope of the deposition.

(3) Protective Orders. At the request of a party or deponent, and for good cause shown, the court may make any protective order which justice requires to protect a party or deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. Such orders may include, among other remedies, the following: (1) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (2) that the deposition may be taken only by written

questions; (3) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (4) that the deposition be conducted with only such persons present as the court may designate; (5) that after the deposition has been taken, the tape or transcription be sealed until further order of the court; (6) that the deposition not be taken. In ruling on such request, the court may consider, among other things, the age, health, level of intellectual functioning, and emotional condition of the witness, whether the witness has knowledge material to the proof of or defense to any essential element of the crime, whether the witness has provided a full written, taped, or transcribed account of his or her proposed testimony at trial, whether the witness's testimony will relate only to a peripheral issue in the case, or whether an informal interview or telephone conference with the witness will suffice for the purposes of discovery in the case.

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

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, 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:

* * *

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who is currently or, prior to taking up residence within this state was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision:

(A) 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; and

(B) information shall ~~only~~ be posted electronically only if the offense for which the person was required to register in the other jurisdiction was:

(i) a felony; or

(ii) a misdemeanor punishable by more than six months ~~or more~~ of imprisonment.

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

* * *

(13) if the offender has not been subject to a risk assessment, a statement that the offender has not been so assessed and that such a person is presumed to be high risk, provided that the department of corrections shall permit a person subject to this subdivision to obtain a risk assessment at the person's own expense.

* * *

Sec. 3. Sec. 14 of No. 58 of the Acts of 2009 is amended to read:

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, 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:

* * *

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who is currently or, prior to taking up residence within this state was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; except that, for purposes of this subdivision:

(A) 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; and

(B) information shall ~~only~~ be posted electronically only if the offense for which the person was required to register in the other jurisdiction was:

(i) a felony; or

(ii) a misdemeanor punishable by more than six months ~~or more~~ of imprisonment.

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

* * *

(13) if the offender has not been subject to a risk assessment, a statement that the offender has not been so assessed and that such a person is presumed to be high risk, provided that the department of corrections shall permit a person subject to this subdivision to obtain a risk assessment at the person's own expense.

* * *

Sec. 4. Sec. 11 of No. 58 of the Acts of 2009 is amended to read:

Sec. 11. APPLICABILITY

Secs. 6, 9, and 14 of this act (sex offender registry and Internet sex offender registry) shall apply only to the following persons:

(1) A person convicted prior to the effective date of this act who is under the supervision of the department of corrections except as provided in subdivision (3)(A) of this section.

(2) A person convicted on or after the effective date of this act.

(3)(A) A person convicted prior to the effective date of this act of a crime committed in this state, who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13; or a person convicted prior to the effective date of this act of lewd or lascivious conduct with a child in violation of 13 V.S.A. § 2602 or a second or subsequent conviction for voyeurism in violation of 13 V.S.A. § 2605(b) or (c), who is under the supervision of the department of corrections, unless the sex offender review committee determines pursuant to the requirements of this subdivision (3), taking into account whether the person has been charged or convicted of a criminal offense or a probation or parole violation since being placed on the registry, that the person has successfully ~~re-integrated~~ reintegrated into the community.

(B)(i) No person's name shall be posted electronically pursuant to subdivision (3)(A) of this section before October 1, 2009.

(ii) On or before July 1, 2009, the department of public safety shall provide notice of the right to petition under this subdivision (3)(B) to all persons convicted prior to the effective date of this act who are not under the supervision of the department of corrections and are subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13.

(iii) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (3)(A) of this section shall file a petition with the committee before October 1, 2009. If a petition is filed before October 1, 2009, the petitioner's name shall not be posted electronically pursuant to subdivision (3)(A) of this section until after the sex offender review committee has ruled on the petition.

(C) All decisions made by the sex offender review committee under subdivision (3)(A) of this section shall be reviewed and approved by the commissioner of the department of corrections. The agency of human services

shall adopt emergency rules which establish criteria for the commissioner's decision.

(4)(A) A person convicted prior to July 1, 2009, of a crime committed in any jurisdiction of the United States other than Vermont, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13, unless the sex offender review committee determines pursuant to the requirements of this subdivision (4), taking into account whether the person has been charged or convicted of a criminal offense or a probation or parole violation since being placed on the registry, that the person has successfully reintegrated into the community.

(B)(i) No person's name shall be posted electronically pursuant to subdivision (4)(A) of this section before July 1, 2010.

(ii) On or before April 1, 2010, the department of public safety shall provide notice of the right to petition pursuant to this subdivision (4)(B) to all persons with a right to file a petition under subdivision (4)(A) of this section.

(iii) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (4)(A) of this section shall file a petition with the committee before July 1, 2010. If a petition is filed before July 1, 2010, the petitioner's name shall not be posted electronically pursuant to subdivision (4)(A) of this section until after the sex offender review committee has ruled on the petition.

(iv) The petition shall be accompanied by available information regarding the nature and circumstances of the offense and sentence from the jurisdiction where the offense occurred. The committee may deny the petition if sufficient available information regarding the nature and circumstances of the offense and sentence are not provided within 90 days after the committee requests the information from the petitioner.

(C) All decisions made by the sex offender review committee under subdivision (4)(A) of this section shall be reviewed and approved by the commissioner of the department of corrections. The agency of human services shall adopt emergency rules which establish criteria for the commissioner's decision.

Sec. 5. EFFECTIVE DATE

(a) Sec. 1 of this act shall take effect on July 1, 2011.

(b) This section and Secs. 2, 3, and 4 of this act shall take effect on passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Joint Resolution Adopted in Concurrence

J.R.H. 38.

Joint House resolution entitled:

Joint resolution relating to the use of the state house for the Green Mountain Boys' State Program.

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

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By Representative Haas,

H.C.R. 238.

House concurrent resolution recognizing the celebration in the town of Rochester of the Asian Lunar New Year 4708.

By Representative Edwards and others,

By Senators Doyle and Cummings,

H.C.R. 239.

House concurrent resolution recognizing the important role of nonprofit organizations in Vermont.

By Representative Olsen and others,

By Senators Shumlin and White,

H.C.R. 240.

House concurrent resolution congratulating the Leland & Gray Union High School 2009 Division III championship baseball team.

By All Members of the House,

By All Members of the Senate,

H.C.R. 241.

House concurrent resolution congratulating WCAX television news and reporter Kristin Carlson on receipt of a 2010 Alfred I. duPont-Columbia University Award.

By Representative Ram and others,

H.C.R. 242.

House concurrent resolution congratulating GospelFest on its 20th anniversary.

By Representative Koch and others,

H.C.R. 243.

House concurrent resolution congratulating the Green Mountain Council Boy Scout Eagle Class of 2009.

By Representative Fagan and others,

By Senators Ayer, Carris, Cummings, Flory, Giard, Hartwell, MacDonald and McCormack,

H.C.R. 244.

House concurrent resolution commemorating the Boy Scouts of America's centennial anniversary and the establishment of Boy Scouting in Vermont.

Adjournment

On motion of Senator Mazza, the Senate adjourned until ten o'clock and twenty minutes in the forenoon on Thursday, February 18, 2010.

THURSDAY, FEBRUARY 18, 2010

The Senate was called to order by the President.

Joint Assembly

At ten o'clock and thirty minutes in the morning, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 43. Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

The Senate repaired to the hall of the House.

Having returned therefrom, at eleven o'clock and thirty minutes in the morning, the President assumed the Chair.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the morning.

FRIDAY, FEBRUARY 19, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 21

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. 759. An act relating to executive branch fees.

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

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 238. House concurrent resolution recognizing the celebration in the town of Rochester of the Asian Lunar New Year 4708.

H.C.R. 239. House concurrent resolution recognizing the important role of nonprofit organizations in Vermont.

H.C.R. 240. House concurrent resolution congratulating the Leland & Gray Union High School 2009 Division III championship baseball team.

H.C.R. 241. House concurrent resolution congratulating WCAX television news and reporter Kristin Carlson on receipt of a 2010 Alfred I. duPont-Columbia University Award.

H.C.R. 242. House concurrent resolution congratulating GospelFest on its 20th anniversary.

H.C.R. 243. House concurrent resolution congratulating the Green Mountain Council Boy Scout Eagle Class of 2009.

H.C.R. 244. House concurrent resolution commemorating the Boy Scouts of America's centennial anniversary and the establishment of Boy Scouting in Vermont.

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

Message from the House No. 22

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. 229. An act relating to mausoleums and columbaria.

H. 598. An act relating to sorting early voter absentee ballots.

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. 49. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 23

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. 542. An act relating to transfers of mobile homes and rent-to-own transactions.

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. 286. An act relating to challenges for change.

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

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 289.

By the Committee on Finance,

An act relating to approval for continued operation of the Vermont Yankee nuclear power station.

Bills Referred

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

H. 229.

An act relating to mausoleums and columbaria.

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

H. 542.

An act relating to transfers of mobile homes and rent-to-own transactions.

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

H. 598.

An act relating to sorting early voter absentee ballots.

To the Committee on Government Operations.

H. 759.

An act relating to executive branch fees.

To the Committee on Finance.

Joint Resolution Referred**J.R.S. 50.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senator Illuzzi,

J.R.S. 50. Joint resolution urging expedited federal initiation of the National Environmental Policy process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

Whereas, the late Michael Dunn, the owner of the 800-acre Eagle Point Farm (approximately one-half of which is located in Derby, Vermont, and the balance in Quebec), conditionally donated through his trust the Vermont portion of this exceptional parcel as a gift to the United States of America for purposes of permanent preservation and public enjoyment, and

Whereas, Eagle Point Farm's Vermont acreage includes diverse freshwater wetland, woodland, riparian habitats, rich agricultural land, and more than a mile of frontage on 27-mile-long Lake Memphremagog, and

Whereas, this impressive acreage provides land for high quality breeding, migratory, and wintering habitats for priority waterfowl and grassland bird species, and

Whereas, many rare plants and unique natural communities are also located at Eagle Point Farm, and

Whereas, for many decades, through the generosity of the Dunn family, many Vermonters have enjoyed Eagle Point Farm for walking, fishing, hunting, wildlife observation and access to Lake Memphremagog, and

Whereas, because Eagle Point Farm is waterfront land, it is valuable monetarily and is at a high risk of being developed should the United States not ultimately accept Michael Dunn's generous gift, and

Whereas, not only is this land attractive to developers, but also, in accordance with the terms of Michael Dunn's conditional donation, should the federal government not acquire the Vermont portion of Eagle Point Farm by September 1, 2010, then the trustee must dispose of the property in a manner that would maximize its cash value for the benefit of a secondary institutional beneficiary, and

Whereas, the northeastern office of the United States Fish and Wildlife Service (USFWS), in close collaboration with the state of Vermont, has assessed the conservation value of the Vermont portion of Eagle Point Farm, and

Whereas, there is mutual agreement among federal and state authorities that the optimal disposition of the Vermont portion of Eagle Point Farm is to proceed with a proposal that the Vermont Land Trust has put forward – to wit: that the USFWS should acquire title to the land and that the Vermont Agency

of Natural Resources should then administer Eagle Point Farm in Derby as a coordination area for passive recreational use in accordance with National Wildlife Refuge guidelines and a jointly entered memorandum of understanding, and

Whereas, the Province of Quebec is simultaneously working toward accepting a gift of that portion of Michael Dunn's property located in the province, and such an acquisition would provide opportunities for cross-border collaboration, and

Whereas, the Vermont Fish and Wildlife Conservation Group, located in nearby East Charleston, has written to the Vermont congressional delegation offering its full support for both the federal acquisition and subsequent state management of Eagle Point Farm, and

Whereas, the Memphremagog Watershed Association (MWA) in Derby, whose mission is "the preservation of the environment and natural beauty of the Memphremagog watershed," has written to public officials that it "cannot overstate the importance of and their support for keeping Michael Dunn's property in the public trust and for public use," and

Whereas, the MWA has worked collaboratively with Memphremagog Conservation, Inc. for the preservation of Eagle Point Farm on both sides of the border, and it has reminded public officials that preservation of the property is "consistent with the efforts and goals of the Quebec/Vermont Steering Committee which is charged with the restoration and protection of the international waters of Lake Memphremagog," and

Whereas, the northeastern office of the USFWS has submitted a proposal to its national office in Washington, D.C., to move forward immediately with the scientific assessment and public comment requirements of the National Environmental Policy Act (NEPA) in order that the acquisition process can occur prior to the September 1, 2010, deadline, and

Whereas, the NEPA process will provide the opportunity for the general public to offer its comments on the proposed federal acquisition and state management of Eagle Point Farm in Derby to help determine the best long-term outcome for this special piece of Vermont, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly urges the United States Fish and Wildlife Service to expedite the National Environmental Policy Act process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of the Interior Ken Salazar, United States Fish and Wildlife Service Commissioner Sam Hamilton, the Vermont congressional delegation, and Vermont Secretary of Natural Resources Jonathan Wood.

Thereupon, the President *pro tempore*, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Natural Resources and Energy.

Joint Resolution Placed on Calendar

J.R.S. 51.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senator Shumlin,

J.R.S. 51. Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Environmental Judge.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, March 18, 2010, at ten o'clock and thirty minutes in the forenoon to vote on the retention of two Superior Judges and one Environmental Judge. In case the vote to retain said Judges shall not be made on that day, the two Houses shall meet in Joint Assembly at ten o'clock and thirty minutes in the forenoon on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Senate Resolution Placed on Calendar

S.R. 19.

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

By All Members of the Senate,

S.R. 19. Senate resolution urging Congress to support a fiscal year 2011 federal appropriation for the Northeast Great Waters.

Whereas, the restoration and conservation of our nation's "great waters" ecosystems are both an economic and an environmental imperative, and

Whereas, Lake Champlain is recognized as a “great water” by the America’s Great Waters Coalition, and

Whereas, Lake Champlain is also identified by the Environmental Protection Agency as a “large aquatic ecosystem” in its “Geographic Areas” initiative, and

Whereas, a comprehensive plan to restore and conserve Lake Champlain has been in place for many years, and

Whereas, historical levels of federal funding have been insufficient to adequately address the many pressing restoration and conservation needs identified in the Lake Champlain plan, and

Whereas, the seven northeastern states have joined hands through an appeal by the Northeast Regional Ocean Council for a unified \$70 million 2011 appropriations request to advance implementation of restoration plans for the region’s four “great waters” ecosystems, including Lake Champlain, Long Island Sound, the Gulf of Maine, and Narragansett Bay, and

Whereas, Lake Champlain would receive approximately \$10 million of the regional request, an opportunity that would complement and enhance the many great ongoing efforts, and

Whereas, governmental and nongovernmental organizations are working together with their counterparts in all the other northeastern states in support of the 2011 request, *now therefore be it*

Resolved by the Senate:

That the Senate of the State of Vermont urges Congress to support a fiscal year 2011 federal appropriation for the Northeast Great Waters, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the Vermont congressional delegation.

Thereupon, in the discretion of the President, under Rule 51, the resolution was placed on the Calendar for action the next legislative day.

**Message from the Governor
Appointments Referred**

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

Davis, Susan of Shelburne - Member of the Travel Information Council, - from March 1, 2010, to February 29, 2012.

To the Committee on Transportation.

Heald, Francis of Rutland - Member of the Travel Information Council, - from March 1, 2010, to February 29, 2012.

To the Committee on Transportation.

Kennett, Elizabeth G. of Rochester - Member of the Travel Information Council, - from March 1, 2010, to February 29, 2012.

To the Committee on Transportation.

Sutton, Joseph of East Middlebury - Member of the Travel Information Council, - from March 1, 2010, to February 29, 2012.

To the Committee on Transportation.

Sheahan, Nancy of South Burlington - Member of the State Police Advisory Commission, - from March 1, 2010, to February 28, 2014.

To the Committee on Government Operations.

Willey, Leo D. of Newport - Member of the State Police Advisory Commission, - from March 1, 2010, to February 28, 2014.

To the Committee on Government Operations.

Dimitruk, Catherine of Colchester - Member of the Vermont Natural Gas and Oil Resources Board, - from March 1, 2010, to February 28, 2013.

To the Committee on Natural Resources and Energy.

Canney, Dagne of North Clarendon - Member of the Vermont Housing Finance Agency, - from February 9, 2010, to January 31, 2014.

To the Committee on Finance.

Alberts, Robert of Bridport - Member of the Vermont Housing Finance Agency, - from February 9, 2010, to January 31, 2014.

To the Committee on Finance.

Gregory, Peter of Hartland - Member of the State Infrastructure Bank Board, - from March 1, 2010, to February 28, 2015.

To the Committee on Finance.

Hogan, Ann L. of Shelburne - Member of the State Infrastructure Bank Board, - from March 1, 2010, to February 28, 2015.

To the Committee on Finance.

Lacroix, Louis of St. Johnsbury - Member of the State Labor Relations Board, - from February 11, 2010, to June 30, 2012.

To the Committee on Economic Development Housing and General Affairs.

Bill Passed in Concurrence with Proposal of Amendment; Rules Suspended; Bill Messaged

H. 533.

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

An act relating to military parents' rights.

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

Consideration Postponed

Senate bill entitled:

S. 255.

An act relating to an amendment to the charter of the Chittenden County Transportation Authority.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Bill Amended; Third Reading Ordered

S. 272.

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

An act relating to human trafficking.

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) According to his book, *The Slave Next Door: Human Trafficking and Slavery in America Today*, Dr. Kevin Bales states that the number of human beings estimated to be enslaved today has reached over 27 million worldwide, the highest in recorded history. Vermont and all of its bordering states have seen elements of human trafficking, yet Vermont is the only remaining state in the Northeast and one of the remaining five in the nation

lacking legislation on this issue. Vermont's geographical location bordering Canada makes it susceptible to human trafficking activity.

(2) Human trafficking is an interrelated, under-reported crime that is intentionally kept secret by the traffickers who profit by billions of dollars from these crimes. Human trafficking is the third most profitable illegal global enterprise after drug and weapon trafficking, all of which have been found to be closely related.

(3) Because Vermont has a limited level of awareness regarding the existence of human trafficking within its own borders, the collaborative efforts of a human trafficking task force are necessary to raise public awareness and to recommend measures that will assist victims of human trafficking.

Sec. 2. HUMAN TRAFFICKING TASK FORCE

(a) As used in this section, "human trafficking" shall have the same meaning as in 18 U.S.C. §§ 1589–1592.

(b) For purposes of the definition of "human trafficking," "forced labor" means providing or obtaining the labor or services of a person:

(1) by threats of serious harm to, or physical restraint against, that person or another person;

(2) by means of any scheme, plan, or pattern intended to cause the person to believe that if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) by means of the abuse or threatened abuse of law or the legal process.

(c) The human trafficking task force is established for the purpose of raising public awareness about human trafficking within the state and across state and international borders, identifying resources for the victims of human trafficking, recommending to the public ways to identify and report acts of human trafficking and reporting, and making findings and recommendations regarding those efforts to the general assembly.

(d) The human trafficking task force shall be composed of the following members:

(1) the attorney general or his or her designee, who shall serve as chair;

(2) a representative of the law enforcement community, appointed by the commissioner of public safety;

(3) a representative of Vermont's emergency housing or shelter community;

(4) representatives, appointed by the governor, from each of the following:

- (A) the Vermont state housing authority;
- (B) the department of labor;
- (C) the department of education;
- (D) the department for children and families;
- (E) the business community; and
- (F) the agency of agriculture, food and markets.

(5) a representative, appointed by the secretary, from the agency of human services who specializes in refugee matters;

(6) a representative of the coalition of Vermonters against slavery today;

(7) a representative of the Vermont farm bureau;

(8) a representative of the Vermont network against domestic and sexual violence;

(9) a representative of the Vermont coalition of runaway and homeless youth programs;

(10) a representative of the Vermont crime victim's services; and

(11) an immigration attorney, appointed by the Vermont bar association.

(e) The task force shall consult with representatives from the following:

(1) the human rights commission;

(2) the department of public safety;

(3) the polaris project;

(4) health care professionals;

(5) the United States' attorney for Vermont;

(6) migrant worker and other labor advocacy groups; and

(7) any other groups or individuals the committee deems appropriate.

(f) The task force shall perform the following duties:

(1) Identify ways to raise public awareness about human trafficking in Vermont communities.

(2) Recommend how the Vermont public, business community, local and state government, health, and education providers can best identify, report, and prevent acts of human trafficking in Vermont.

(3) Identify the services needed by victims of human trafficking and their families, and recommend ways to provide those services.

(g) The task force shall have the assistance and cooperation of all state and local agencies and departments.

(h) On or before November 15, 2010, the task force shall report to the members of the senate and house committees on judiciary and to legislative council its recommendations and legislative proposals relating to its findings.

(i) On or before January 15, 2011, the task force shall report to the general assembly and to the governor its findings and any recommendations.

(j) The task force may meet no more than six times, and shall cease to exist on January 15, 2011.

Sec. 3. LAW ENFORCEMENT ADVISORY BOARD

(a) On or before November 15, 2010, the commissioner of public safety shall report to the law enforcement advisory board on the status of efforts by Vermont law enforcement to respond to issues regarding the crime of human trafficking and what recommendations, if any, should be made to the general assembly in order to respond more effectively to those issues.

(b) Prior to making this report, the commissioner shall consult with the following groups:

(1) a representative of the Vermont association of chiefs of police;

(2) a representative of the Vermont sheriffs' association;

(3) the attorney general, or his or her designee from the criminal division;

(4) a state's attorney, appointed by the executive director of the department of state's attorneys and sheriffs;

(5) a representative from the Vermont center for crime victim services;

(6) a representative from the network against domestic and sexual violence;

(7) a representative from the coalition of Vermonters against slavery today;

(8) the executive director of the Vermont police academy or his or her designee;

(9) the United States' attorney for Vermont or his or her designee;

(10) representatives from federal law enforcement agencies in Vermont;

(11) the human trafficking task force; and

(12) any other groups or individuals the commissioner deems appropriate.

(c) The law enforcement advisory board shall include its findings and recommendations, based upon the commissioner's report, in its annual report to the general assembly and governor as required pursuant to 24 V.S.A. § 1939(d).

Sec. 4. EFFECTIVE DATE

This act shall take effect upon 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.

Third Reading Ordered

H. 483.

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

An act relating to approval of the merger of the Village of North Westminster and the Town of Westminster and the charter of the Town of Westminster.

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.

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, February 23, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 49.

TUESDAY, FEBRUARY 23, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Reverend Mara Dowdall of Montpelier.

Pledge of Allegiance

Pages Louise Weed and Shelli Young then led the members of the Senate in the pledge of allegiance.

Message from the House No. 24

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. 281. An act relating to the removal of bodily remains.

H. 562. An act relating to the regulation of professions and occupations.

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. 117. An act relating to the date of the primary election.

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

Committee Bill Introduced; Rules Suspended; Bill Committed

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 290.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to restoring solvency to the unemployment trust fund.

Thereupon, pending entry of the bill on the Calendar for notice the next legislative day, on motion of Senator Mazza, the rules were suspended and the bill was taken up for immediate consideration.

Thereupon, pending second reading of the bill, on motion of Senator Mazza, the bill was committed to the Committee on Finance.

Bill Referred to Committee on Finance**S. 283.**

Senate 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 amending miscellaneous motor vehicle laws, eliminating the motorcycle rider training program advisory committee, and repealing the interstate compact for motor vehicle safety equipment.

Bill Referred to Committee on Appropriations**S. 288.**

Senate 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 the Vermont recovery and reinvestment act of 2010.

Bills Referred

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

H. 281.

An act relating to the removal of bodily remains.

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

H. 562.

An act relating to the regulation of professions and occupations.

To the Committee on Government Operations.

Bill Passed

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

S. 272. An act relating to human trafficking.

Bill Passed in Concurrence**H. 483.**

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

An act relating to approval of the merger of the Village of North Westminster and the Town of Westminster and the charter of the Town of Westminster.

Bill Amended; Third Reading Ordered

S. 255.

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

An act relating to an amendment to the charter of the Chittenden County Transportation Authority.

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

**Sec. 1. CHITTENDEN COUNTY TRANSPORTATION AUTHORITY;
CHARTER; CODIFICATION**

The legislative council shall, consistent with section 424 of Title 2, codify the charter of the Chittenden County Transportation Authority as set forth in No. 122 of the acts of 1973 and as that act is further amended by this act. Codification may include the correction of internal cross-references.

Sec. 2. Secs. 2, 3, 6, and 7 of No. 122 of the Acts of 1973 are amended to read:

Sec. 2. Area of Operation

The area of operation shall be Chittenden County, and may additionally include the boundaries of municipalities in adjoining counties, if such municipalities determine to join the authority as set forth in section 3 of this act, Franklin, Grand Isle, and Washington Counties and the towns of Orange, Washington, and Williamstown. The area of operation shall include Addison and Caledonia counties and the towns of Orange County other than Orange, Washington, and Williamstown, but only for the provision of commuter services. The area of operation shall include Lamoille County, but only for the provision of published scheduled services.

Sec. 3. Membership in the authority

Membership in the authority shall consist of those municipalities which elect to join the authority by majority vote of its voters present and voting on said the question at an annual or special meeting duly warned for such the purpose prior to July 1, 2010. Beginning July 1, 2010, a municipality may hold an annual meeting or a special meeting for the purpose of determining through election by a majority vote of its voters present and voting on the

question only if the municipality is specifically authorized to join the authority either under Sec. 13 of this charter or by resolution duly passed by the Chittenden County Transportation Authority Board of Commissioners. The initial meeting of a municipality called to determine whether or not to join the authority shall be warned in the manner provided by law, except that for such meeting only, any warning need not be posted for a period in excess of 20 days, any other provision of law or municipal charter to the contrary notwithstanding. Membership may be terminated only in the manner provided in section 8 of this act.

Sec. 6. Government and organization

(a) The officers of the authority, and their election or designation shall be as follows:

(1) Board of commissioners. The purposes, powers, duties and responsibilities of the authority shall be exercised by the board of commissioners, consisting of ~~two commissioners~~ one commissioner from each municipality which is a member of this authority and two commissioners from the City of Burlington. ~~Such~~ The commissioners shall be appointed by and serve at the pleasure of the legislative body of the member municipality. Any vacancies on the board of commissioners shall be filled by the legislative body of the respective member municipality, but in the event that the legislative body fails to appoint a commissioner within two months from the date of the occurrence of the vacancy, ~~such~~ the vacancy shall be filled by the board of commissioners. Commissioners shall serve without pay.

* * *

Sec. 7. Annual budget and assessments

* * *

(c) The treasurer of the authority, following adoption of the budget, shall apportion the sums required to be contributed by each member municipality according to the ~~average number of weekly miles of service for the 12 month period preceding the adoption of the budget, for each member community, as compared to the average number of weekly miles of service for all member communities for the same period~~ formula for apportionment. The formula for apportionment may be changed by the board of commissioners with the concurrence of ~~all~~ the legislative bodies of at least three-quarters of the member municipalities.

* * *

Sec. 3. Sec. 48 of No. 56 of the Acts of 2003 is amended to read:

Sec. 48. Sec. 4(c)(11) of No. 122 of the Acts of 1973 is amended to read:

* * *

(11) Within Chittenden County and its member municipalities, to acquire by the exercise of the power of eminent domain any real property which it may have found necessary for its purposes, in the manner provided for the condemnation of land or rights therein as set forth in sections 221-233 of Title 19, and acts amendatory thereof or supplementary thereto;

Sec. 4. No. 122 of the Acts of 1973 is amended by adding new sections 12, 13, and 14 to read:

Sec. 12. ASSESSMENTS OF NEW MEMBERS OUTSIDE OF CHITTENDEN COUNTY

Municipalities outside of Chittenden County that vote to join Chittenden County Transportation Authority on or after July 1, 2010, shall negotiate with the board of commissioners of the Chittenden County Transportation Authority on the amount of the levy to be assessed upon the municipality and terms of payment of that assessment; and the municipality may not join prior to agreement with the authority on terms of the levy and payment. Upon the addition of one municipality to the membership of the Chittenden County Transportation Authority from outside Chittenden County, said authority shall immediately begin work on the formula for assessment that will be approved in accordance with this act.

Sec. 13. MUNICIPALITIES AUTHORIZED TO VOTE FOR MEMBERSHIP IN THE CHITTENDEN COUNTY TRANSPORTATION AUTHORITY

The following municipalities are authorized to hold an election for the purpose of determining membership in the Chittenden County Transportation Authority: Barre City, Berlin, Colchester, Hinesburg, Montpelier, Morristown, Richmond, St. Albans City, Stowe, and Waterbury.

Sec. 14. OTHER REPRESENTATION

If Washington, Lamoille, Franklin, or Grand Isle county does not have a municipal member from its county on the board of commissioners of the Chittenden County Transportation Authority, the regional planning commission serving the county may appoint a board member to the Chittenden County Transportation Authority from a member of its regional planning commission or regional planning commission staff to represent its interests on the Chittenden County Transportation Authority board.

Sec. 5. REPEAL

Secs. 46 and 47 of No. 56 of the Acts of 2003 are repealed.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2011. However, a municipality that is authorized to vote for membership in the Chittenden County Transportation Authority under Secs. 3 and 13 of No. 122 of the Acts of 1973 as amended by this act, shall be authorized to do so at its 2011 annual meeting.

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.

Joint Resolution Adopted on the Part of the Senate**J.R.S. 51.**

Joint Senate resolution entitled:

Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Environmental Judge.

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

Senate Resolution Adopted**S.R. 19.**

Senate resolution entitled:

Senate resolution urging Congress to support a fiscal year 2011 federal appropriation for the Northeast Great Waters.

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

Rules Suspended; House Proposal of Amendment Concurred In; Rules Suspended; Bill Delivered**S. 286.**

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

An act relating to challenges for change.

Was taken up for immediate consideration.

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

Sec. 1. LEGISLATIVE INTENT

(a) This act is intended to implement the concepts laid out by the report "Challenges for Change: Results for Vermonters," as prepared by the steering

team to the joint legislative government accountability committee and presented to the committee on January 5, 2010.

(b) Vermont state government is faced with a substantial gap between available revenues and projected expenditures based on the current manner of providing services. This act challenges us to redesign how we provide government services. If the challenges are fully met, we will create better methods for providing government services, while spending less money and still achieving the outcomes specified in this act.

(c) This effort will address an estimated \$38 million of the general fund projected shortfall and \$11 million in property tax pressure in fiscal year 2011; and in fiscal year 2012, would reduce spending by \$72 million in general funds and \$26 million in property taxes from fiscal year 2010 levels.

(d) Unlike traditional cuts in spending, these challenges focus both on available funding levels and on the outcomes expected, in order to give our citizens better results with less money.

(e) These challenges would require continued efforts in design and implementation work. This act is starting the reform process by issuing challenges and providing some tools to succeed in meeting those challenges. State agencies, school districts, local governments, and other recipients of state funds will have the opportunity to use their expertise to shape the changes necessary to meet these challenges.

(f) This effort addresses only one-quarter of our fiscal year 2011 shortfall. Efforts to address the remaining budget shortfall will be part of the regular budget process.

(g) This act summarizes the eight challenges in the Challenge Report, establishes the outcomes for each challenge, and requests a design for implementation of each challenge and its related accountability measures. The legislature recognizes and expects this initiative to evolve as all parties together seek to meet these challenges.

(h) The outcomes identified for each of the challenges will be used to guide administrators, policy makers, executives, service providers, and employees in taking action to meet the challenges.

Sec. 2. CHARTER UNIT CHALLENGE

(a) The charter unit challenge is to identify units of state government which agree to improve specified results while spending a combined total of \$2 million less in fiscal year 2011 than in fiscal year 2010 and, in fiscal year 2012, spending \$4.5 million less than in fiscal year 2010, or by generating all or a portion of these amounts in entrepreneurial revenue. The charter units will

enter into formal agreements with the secretary of administration to specify between three and eight measurable results to improve, and the flexibility in practices and procedures needed to accomplish the target results.

(b) Outcomes for the charter unit challenge:

(1) Meet challenge target of reducing spending or generating entrepreneurial revenue of \$2 million in general funds in FY2011 and \$4.5 million in general funds in fiscal year 2012.

(2) Increase employees' engagement in their work.

(3) Produce outcomes for Vermonters that are the same as or better than outcomes delivered prior to redesign.

(c) Design and implementation: Within four weeks of the enactment of this legislation, the persons to whom these challenges are issued shall provide the general assembly and the committees of jurisdiction with the following:

(1) A progress report on the plan of implementation.

(2) A request for any changes to or exemptions from existing law, rules, and regulations, or additional authority necessary to meet these challenges and achieve these outcomes.

(3) A proposal for a system of accountability to measure success in meeting the challenges and achieving the outcomes. The proposed system shall include measures that are simple, objective, consistent, and based on data that are currently collected or could easily be collected. The proposed system shall also include a schedule for accountability in meeting these challenges and achieving these outcomes, and shall identify milestones, include assessments of effectiveness, and provide for quarterly meetings with the house and senate committees of jurisdiction. The proposed system shall be submitted for approval as provided in Sec. 10 of this act.

Sec. 3. PERFORMANCE CONTRACTING AND GRANT-MAKING CHALLENGE

(a) The performance contracting challenge is to institute performance contracting and performance grant-making to achieve better results from contractors and grantees at a fiscal year 2011 cost which is 3.5 percent lower than fiscal year 2010 spending, and at a fiscal year 2012 cost which is 10 percent lower than fiscal year 2010 spending. The goal is to pay contractors based on results, while reducing the total price of contracts and grants. It is also to reduce the cost of compliance for vendors while maintaining compliance with essential state requirements. This challenge is directed to areas of government other than programmatic service grants and contracts in human services which are addressed in Sec. 4 of this act. It does apply to

administrative and operational vendor contracts in human services, including such items as Medicaid claims, out-of-state beds, and prisoner health care.

(b) Outcomes for performance contracting and grants:

(1) Increase the use of performance contracts with the goal of converting \$70 million of contracts to performance-based contracts.

(2) Contractors and grantees meet performance targets specified in contracts.

(c) Design and implementation: Within four weeks of the enactment of this legislation, the persons to whom these challenges are issued shall provide the general assembly and the committees of jurisdiction with the following:

(1) A progress report on the plan of implementation.

(2) A request for any changes to or exemptions from existing law, rules, and regulations, or additional authority necessary to meet these challenges and achieve these outcomes.

(3) A proposal for a system of accountability to measure success in meeting the challenges and achieving the outcomes. The proposed system shall include measures that are simple, objective, consistent, and based on data that are currently collected or could easily be collected. The proposed system shall also include a schedule for accountability in meeting these challenges and achieving these outcomes, and shall identify milestones, include assessments of effectiveness, and provide for quarterly meetings with the house and senate committees of jurisdiction. The proposed system shall be submitted for approval as provided in Sec. 10 of this act.

Sec. 4. HUMAN SERVICES CHALLENGE

(a) The client-centered, results-based, human services challenge to the state's human service administrators, employees, and service providers is to redesign delivery of the state's human services programs and health care system as a client-centered, integrated system that improves outcomes within budget constraints. There are four parts to this challenge:

(1) Client-centered intake and client-centered coordinated and managed services. Improve the outcomes for individuals and families receiving services from the agency of human services, while spending five percent less in fiscal year 2011 than in fiscal year 2010 and in fiscal year 2012 spending 10 percent less than in fiscal year 2010, by redesigning the delivery of services to be more efficient, interconnected, and targeted to achieve the essential outcomes with less duplication of services.

(2) Support services promoting independence of elders and individuals with disabilities. Maintain or improve services for elders and individuals with disabilities by redesigning how support services are provided and by allowing family members who desire to be caregivers to provide part of the support services, while spending two percent less in fiscal year 2011 than in fiscal year 2010 and five percent less in fiscal year 2012 than in fiscal year 2010.

(3) Expand the policy of using payment methods based on outcome measures. Redesign grants and contracts made by the agency to service providers to use payment methods to achieve spending five percent less in fiscal year 2011 than in fiscal year 2010 and 10 percent less in fiscal year 2012 than in fiscal year 2010, while maintaining or improving service.

(4) Outcomes-based contracts with the designated agencies. Improve the outcomes of individuals and families served by the 17 agencies designated under 18 V.S.A. § 8905 to provide mental health services and services to individuals with a developmental disability, while spending five percent less in fiscal year 2011 than in fiscal year 2010 and 7.5 percent less in fiscal year 2012 than in fiscal year 2010, by enhancing collaboration among these agencies and by redesigning the contracts.

(b) The agency of human services shall be governed by the general outcomes in subdivision (1) of this subsection, while achieving the specific outcomes in subdivision (2):

(1) General outcomes.

(A) Children, families, and individuals are engaged in and contribute to their community's decisions and activities.

(B) Pregnant women and children thrive.

(C) Children are ready for school.

(D) Children succeed in school.

(E) Children live in safe, nurturing, stable, supported families.

(F) Youths choose healthy behaviors.

(G) Youths successfully transition to adulthood.

(H) Elders, people with disabilities, and individuals with mental health conditions live with dignity and independence in settings they prefer.

(I) Families and individuals live in safe and supportive communities.

(J) Adults lead healthy and productive lives.

(K) Vermonters receive affordable and appropriate health care at the appropriate time, and health care costs are contained over time.

(L) Families and individuals move out of poverty through education and advancement in employment.

(2) Specific outcomes.

(A) Client-centered intake.

(i) Individuals and families will direct their own lives and will be supported in pursuing their own choices, goals, aspirations, and preferences.

(ii) Individuals and families will have access to apply for health and human services programs for which they are eligible through any department or office of the agency.

(B) Client-centered coordinated and managed services.

(i) Individuals and families will direct their own lives and will be supported in pursuing their own choices, goals, aspirations, and preferences.

(ii) The individual will be at the core of all plans and services and will be treated with dignity and respect.

(iii) Individuals and families with multiple needs will have coordinated services with a single point of accountability to manage the services.

(iv) The agency and service providers will work across departments and organizations to interweave funding sources to ensure efficient and effective use of available funds to meet individuals' and families' needs in order to promote the outcomes in this subsection (b).

(v) The agency and service providers will involve employees and consumers of services in developing the strategies to meet these outcomes.

(C) Support services promoting independence of elders and individuals with disabilities.

(i) All service providers will have performance measures or indicators based on the outcomes in this subsection (b).

(ii) The individual's personal and economic independence will be promoted.

(iii) Families who choose to be caregivers will be supported to provide available and appropriate services for elders and individuals with disabilities.

(iv) Families will receive relief from caregiving responsibilities in order to continue to provide care over the long term.

(D) Expand the policy of using payment methods based on outcome measures.

(i) The administrative and reporting burden for nongovernmental service providers will be reduced.

(ii) Each nongovernmental service provider will have performance measures or indicators based on the outcomes provided for in this subsection (b).

(iii) Nongovernmental service providers will report performance measures or indicators of outcomes once for all grants or contracts with the agency to ensure efficient and simple administration.

(E) Outcome-based contracts with the designated agencies.

(i) The administrative and reporting burden for the designated agencies will be reduced.

(ii) The designated agencies will have performance measures or indicators based on the outcomes provided for in this subsection (b).

(iii) The designated agencies will report performance measures or indicators of outcomes once for all grants or contracts with the agency to ensure efficient and simple administration.

(c) Design and implementation: Within four weeks of the enactment of this legislation, the persons to whom these challenges are issued shall provide the general assembly and the committees of jurisdiction with the following:

(1) A progress report on the plan of implementation.

(2) A request for any changes to or exemptions from existing law, rules, and regulations, or additional authority necessary to meet these challenges and achieve these outcomes.

(3) A proposal for a system of accountability to measure success in meeting the challenges and achieving the outcomes. The proposed system shall include measures that are simple, objective, consistent, and based on data that are currently collected or could easily be collected. The proposed system shall also include a schedule for accountability in meeting these challenges and achieving these outcomes, and shall identify milestones, include assessments of effectiveness, and provide for quarterly meetings with the house and senate committees of jurisdiction. The proposed system shall be submitted for approval as provided in Sec. 10 of this act.

Sec. 5. CORRECTIONS CHALLENGE

(a) The corrections challenge is to the secretary of human services, commissioner of education, and administrative judge to collaborate to develop

a plan which if implemented would reduce the number of people entering the corrections system, decrease the recidivism rate, improve community safety, and reduce the corrections budget by \$10 million in fiscal year 2011 and \$10 million in fiscal year 2012. In fiscal year 2011, \$3 million of the \$10 million saved, and in fiscal year 2012, \$2 million of the \$10 million saved shall be reinvested in programs and services which will reduce the number of people entering the criminal justice system and decrease the recidivism of those who do enter the system.

(b) Outcomes:

(1) The number of people returned to prison for technical violation of probation and parole, while ensuring public safety, shall decrease.

(2) The number of people coming into the corrections system shall decrease.

(3) The number of nonviolent offenders diverted from prison into the community while ensuring public safety and providing effective consequences for criminal behavior shall increase.

(4) Recidivism shall decrease.

(5) A unified crime prevention and justice system shall be established.

(6) Revenues realized within the corrections system from programs designed to develop skills of offenders shall increase.

(7) Short-term lodgings in department of corrections facilities shall decrease.

(c) Design and implementation: Within four weeks of the enactment of this legislation, the persons to whom these challenges are issued shall provide the general assembly and the committees of jurisdiction with the following:

(1) A progress report on the plan of implementation.

(2) A request for any changes to or exemptions from existing law, rules, and regulations, or additional authority necessary to meet these challenges and achieve these outcomes.

(3) A proposal for a system of accountability to measure success in meeting the challenges and achieving the outcomes. The proposed system shall include measures that are simple, objective, consistent, and based on data that are currently collected or could easily be collected. The proposed system shall also include a schedule for accountability in meeting these challenges and achieving these outcomes, and shall identify milestones, include assessments of effectiveness, and provide for quarterly meetings with the house and senate

committees of jurisdiction. The proposed system shall be submitted for approval as provided in Sec. 10 of this act.

Sec. 6. EDUCATION CHALLENGES

(a)(1) The focus on learning challenge is to education policy makers and school administrators to improve student learning and reduce costs of administration, resulting in education spending savings of \$13.3 million in fiscal year 2011, and education spending savings of \$40 million in fiscal year 2012. In fiscal year 2012, 25 percent of the total savings will be reinvested in instructional activities.

(2) The special education incentives challenge is to education policy makers and school administrators to improve special education student outcomes, including graduation rates and employment, while spending five percent less in fiscal year 2011 than in fiscal year 2010, and 7.5 percent less in fiscal year 2012 than in fiscal year 2010.

(b) The outcomes for education for the focus on learning and special education challenges, each of which outcomes is equally important, are:

(1) Increase electronic and distance learning opportunities that enhance learning, increase productivity, and promote creativity.

(2) Increase the secondary school graduation rates for all students.

(3) Increase the aspiration, continuation, and completion rates for all students in connection with postsecondary education and training.

(4) Increase administrative efficiencies within education governance in a manner that promotes student achievement.

(5) Increase cost-effectiveness in delivery of support services for students with individualized education plans.

(6) Increase the use of early intervention strategies that enable students to be successful in the general education environment and help avoid the later need for more expensive interventions.

(c) Design and implementation: Within four weeks of the enactment of this legislation, the persons to whom these challenges are issued shall provide the general assembly and the committees of jurisdiction with the following:

(1) A progress report on the plan of implementation.

(2) A request for any changes to or exemptions from existing law, rules, and regulations, or additional authority necessary to meet these challenges and achieve these outcomes.

(3) A proposal for a system of accountability to measure success in meeting the challenges and achieving the outcomes. The proposed system

shall include measures that are simple, objective, consistent, and based on data that are currently collected or could easily be collected. The proposed system shall also include a schedule for accountability in meeting these challenges and achieving these outcomes, and shall identify milestones, include assessments of effectiveness, and provide for quarterly meetings with the house and senate committees of jurisdiction. The proposed system shall be submitted for approval as provided in Sec. 10 of this act.

Sec. 7. REGULATORY CHALLENGE

(a) The regulatory reform challenge is to the state's environmental and energy regulatory systems to achieve the current standards, goals, and requirements of federal and state law and regulation through improved administrative, application review, and compliance processes while spending three percent less in the agency of natural resources' and agency of agriculture, food and markets' budgets in each fiscal year 2011 and 2012 than in fiscal year 2010.

(b) Outcomes for regulatory reform: The secretary of natural resources, the secretary of agriculture, food and markets, the chair of the public service board, the chair of the natural resources board, the commissioner of public service, and the administrative judge shall protect Vermont's natural resources and collaborate to develop a plan that when implemented will meet the following outcomes:

(1) The permitting and licensing processes achieve environmental standards, and are clear, timely, predictable, and coordinated between agencies and municipalities.

(2) The permitting process enables applicants to readily determine what permits and licenses are needed and what information must be submitted to apply for those permits and licenses.

(3) The permit and enforcement processes enable citizens and visitors to the state of Vermont to understand and comply with the laws protecting our natural and agricultural resources.

(4) Permitting, licensing, and environmental protective services are cost-effective and user friendly.

(5) The decision-making process is transparent, and citizens understand and participate in the process.

(c) Design and implementation: Within four weeks of the enactment of this legislation, the persons to whom these challenges are issued shall provide the general assembly and the committees of jurisdiction with the following:

(1) A progress report on the plan of implementation.

(2) A request for any changes to or exemptions from existing law, rules, and regulations, or additional authority necessary to meet these challenges and achieve these outcomes.

(3) A proposal for a system of accountability to measure success in meeting the challenges and achieving the outcomes. The proposed system shall include measures that are simple, objective, consistent, and based on data that are currently collected or could easily be collected. The proposed system shall also include a schedule for accountability in meeting these challenges and achieving these outcomes, and shall identify milestones, include assessments of effectiveness, and provide for quarterly meetings with the house and senate committees of jurisdiction. The proposed system shall be submitted for approval as provided in Sec. 10 of this act.

(d) The proposal for a system of accountability measures described in subdivision (c)(3) of this section shall also include measurements to determine the rate of compliance with time limits established under 3 V.S.A. § 2822(g) (time limits for agency of natural resource permit applications) and 10 V.S.A. § 6083(d) (time limits for Act 250 permit applications) and whether those time limits can be reduced.

Sec. 8. ECONOMIC DEVELOPMENT CHALLENGE

(a) The economic development challenge is to improve economic development results while spending \$3.4 million less in both fiscal years 2011 and 2012 than in fiscal year 2010.

(1) The challenges for change initiative calls for a \$3.4 million dollar reduction in economic development spending in both fiscal years 2011 and 2012 on economic development programs identified in the unified economic development budget in the agency of commerce and community development; the agency of administration; the agency of agriculture, food and markets; the department for children and families; the department of labor; and the department of public service, as well as economic development-related tax expenditures, incentives, and subsidies identified in the unified economic development budget, and in telecommunications.

(2) Of the \$34.26 million of appropriations in the unified economic development budget, approximately \$24.3 million comes from state funding and approximately \$9.95 million comes from federal funding.

(3) The challenge is to improve economic development results as described in this subsection by:

(A) identifying measurable results of improvement;

(B) designing evidence-based economic development strategies to achieve these improvements and the four goals of economic development identified in 10 V.S.A. § 3;

(C) directing available state funds to these strategies; and

(D) using objective, data-based indicators to measure performance of these strategies.

(b) Outcomes for economic development:

(1) Vermont achieves a sustainable annual increase in nonpublic sector employment and in median household income.

(2) Vermont attains a statewide, state-of-the-art telecommunications infrastructure.

(c) Design and implementation: Within four weeks of the enactment of this legislation, the persons to whom these challenges are issued shall provide the general assembly and the committees of jurisdiction with the following:

(1) A progress report on the plan of implementation.

(2) A request for any changes to or exemptions from existing law, rules, and regulations, or additional authority necessary to meet these challenges and achieve these outcomes.

(3) A proposal for a system of accountability to measure success in meeting the challenges and achieving the outcomes. The proposed system shall include measures that are simple, objective, consistent, and based on data that are currently collected or could easily be collected. The proposed system shall also include a schedule for accountability in meeting these challenges and achieving these outcomes, and shall identify milestones, include assessments of effectiveness, and provide for quarterly meetings with the house and senate committees of jurisdiction. The proposed system shall be submitted for approval as provided in Sec. 10 of this act.

Sec. 9. APPROPRIATIONS; REDUCTIONS AND INVESTMENTS

(a) In creating the challenges for change and design for implementation, the general assembly and the executive branch have worked together. In implementation, the executive branch will take the lead, in accordance with established outcomes and accountability measures and reporting, with a joint executive and legislative steering team, appointed by the joint government accountability committee, to oversee the implementation.

(b) In fiscal year 2011, the secretary of administration is authorized to reduce general fund appropriations or reduce other appropriated funds and

make transfers to the general fund and is authorized to reinvest a portion of the reduced funds, as specified in the following subsections. The secretary of administration, in consultation with the steering team, shall develop an initial outline for the use of these reinvestment funds in one-time expenditures which will most successfully implement the challenges. This outline should include investment criteria, should reserve a portion of the funding for future innovations not yet identified, and should provide both guidance and flexibility to the implementing agencies and departments. Agencies and departments may apply to the secretary of administration for reinvestment funds in accordance with the outline. The secretary of administration shall report at least monthly to the steering team and the joint legislative government accountability committee on funds reinvested to meet these challenges.

(c) The secretary of administration shall have the following authority for each of the challenges:

(1) Charter Units. In fiscal year 2011, the secretary may reduce up to \$3 million of general funds appropriated to units of government that become charter units or make similar transfers to the general fund and may reinvest up to \$1 million of these funds to foster Charter Unit innovation.

(2) Performance Contracting and Grant Making. In fiscal year 2011, the secretary shall reduce general fund appropriations or make transfers to the general fund, or both, by a total of at least \$2,600,000.00; and to achieve this reduction, the secretary may reduce total appropriations up to \$7,000,000.00. The secretary may invest in performance contracting up to \$500,000.00 at any time during fiscal year 2011, so long as the general fund appropriation reductions under this subsection, by the end of fiscal year 2011, after this investment, equal or exceed \$2,600,000.00.

(3) Human Services. In fiscal year 2011, the secretary shall reduce human services general fund appropriations or make transfers to the general fund, or both, by a total of at least \$16,816,000.00; and to achieve this reduction, the secretary may reduce total appropriations up to \$46,040,000.00. The secretary may invest up to \$4,000,000.00 as needed to accomplish this challenge at any time during fiscal year 2011, so long as the general fund appropriation reductions under this subsection, by the end of fiscal year 2011, after this investment, equal or exceed \$16,816,000.00.

(4) Corrections. In fiscal year 2011, the secretary may reduce general fund appropriations in the department of corrections or other criminal justice system organization budgets by up to \$10,000,000.00 and may reinvest up to \$3,000,000.00 to accomplish this challenge; but shall reduce general fund appropriations by at least \$7,000,000.00 plus the amount of reinvestment.

(5) Education. Focus on Learning. In fiscal year 2011, the secretary shall reduce the general fund appropriation and transfer to the education fund by \$3,966,375.00. It is expected that as part of the implementation plan developed in this act, total local education spending related to administration, which includes expenditures related to general administration, school administration, and other support services as defined in the Summary of Annual Statistical Report of Schools (SASRS) as determined by the commissioner of education in consultation with the secretary of administration, will be reduced by \$13,332,500.00 from the 2009 estimates of fiscal year 2011 education spending used to determine property tax rate adjustments under 32 V.S.A. § 5402b; and up to \$2,000,000.00 of education funds may be allocated for reinvestment to meet this challenge, and savings in excess of \$3,966,375.00 plus the amount of the reinvested funds will result in lower property taxes.

(6) Special Education Incentives. In fiscal year 2011, the secretary shall reduce the general fund appropriation and transfer to the education fund by \$2,100,000.00. It is expected that as part of the implementation plan developed in this act, total special education spending will be reduced by \$7,000,000.00, and of this total, \$1,000,000.00 of education funds will be allocated for reinvestment to meet the challenge, and the remainder will result in lower property taxes. It is anticipated that \$4,200,000.00 of this reduction will have an impact on the special education grant.

(7) Regulatory Reform. In fiscal year 2011, the secretary shall reduce total general fund appropriations in the agencies of natural resources and agriculture, food and markets by \$360,000.00, and to achieve this reduction, the secretary may reduce total appropriations to these agencies by up to \$1,720,000.00, and may reinvest up to \$400,000.00 to accomplish this challenge, so long as the general fund reductions under this subsection, by the end of fiscal year 2011, equal or exceed \$360,000.00.

(8) Implement an Economic Development Strategy. In fiscal year 2011, the secretary shall reduce total general fund appropriations related to economic development by \$3,030,000.00, and to achieve this reduction, the secretary may reduce total appropriations related to economic development by up to \$3,430,000.00, and may reinvest up to \$400,000.00 to accomplish this challenge, so long as the general fund reductions under this subsection, by the end of fiscal year 2011, equal or exceed \$3,030,000.00.

(d) In fiscal year 2010, up to \$4,000,000.00 of general funds are appropriated to the secretary of administration for one-time investments authorized in this act to meet the challenges. These funds shall be subject to requirements of subsection (b) of this section. The investments made in each

challenge with the general funds appropriated in this subsection shall be offset within each challenge by a like amount of appropriation reductions or transfer of other funds to the general fund in fiscal year 2011, and reduction by a like amount of the investment identified in subsection (c) of this section for that challenge.

Sec. 10. ADDITIONAL LEGISLATIVE STEPS TO IMPLEMENT THE CHALLENGES FOR CHANGE

(a) Within two weeks after submission of the proposed systems of accountability to the committees of jurisdiction, including all committees which participated in the design of the outcomes, those committees shall consider the proposed systems and make their recommendations to the joint government accountability committee (GAC) on whether the proposed systems will provide sufficient information for legislative oversight of progress toward the outcomes.

(b) GAC, upon recommendation from the committees, shall vote whether the proposed systems are sufficient and should be accepted, in whole or in part. For any portion of the proposed systems not accepted, GAC shall request the secretary of administration to revise and resubmit new proposed systems to the committees for their review and recommendation to GAC, followed by GAC's vote for acceptance or further request to the secretary of administration for revision and resubmission.

Sec. 11. EFFECTIVE DATE

This act shall take effect upon passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Thereupon, on motion of Senator Mazza, the rules were suspended and the bill was ordered delivered to the Governor forthwith.

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By All Members of the House,

By All Members of the Senate,

H.C.R. 245.

House concurrent resolution congratulating the League of Women Voters on its 90th anniversary.

By Representative Copeland-Hanzas and others,

H.C.R. 246.

House concurrent resolution honoring book artist Lucy Swope of West Fairlee.

By Representative Howrigan and others,

By Senators Brock and Kittell,

H.C.R. 247.

House concurrent resolution honoring Lyndon Corey for his half-century of remarkable leadership and service at the Fairfield Fire Department.

By Representative Pugh and others,

H.C.R. 248.

House concurrent resolution congratulating Healthy Living Natural Foods Market of South Burlington on winning the Vermont Grocers' Association Retailer of the Year award.

By Representative Pugh and others,

H.C.R. 249.

House concurrent resolution honoring Theodore Manazir for his exemplary 29 years of public service as a member of the South Burlington school board upon his retirement from the board.

By Representative Savage and others,

By Senators Brock and Kittell,

H.C.R. 250.

House concurrent resolution honoring the exemplary performance of the volunteer fire departments of Sheldon, Swanton, Enosburg, Cambridge, Fairfield, Highgate, and St. Albans Town in combating the August 2009 RockTenn Mill blaze in Sheldon Springs.

By Representative Stevens,

By Senators Ayer and Giard,

H.C.R. 251.

House concurrent resolution in memory of Shoreham firefighter Peter James Coe.

By Representative Howard and others,

H.C.R. 252.

House concurrent resolution celebrating the 25th anniversary of the inauguration of Vermont's first woman governor, Madeleine May Kunin.

By Representative Devereux,

By Senators Nitka, Campbell and McCormack,

H.C.R. 253.

House concurrent resolution congratulating the 2009 Black River High School Presidents boys' soccer team on winning the school's third consecutive Division IV championship.

By Representative Brennan and others,

By Senator Mazza,

H.C.R. 254.

House concurrent resolution in memory of Colchester Selectman Brian William McNeil.

By Representatives Moran and Manwaring,

By Senators Hartwell, Sears, Shumlin and White,

H.C.R. 255.

House concurrent resolution honoring the towns and citizens of Dover, Whitingham, and Wilmington for their creativity in establishing a mutually beneficial economic development model that other communities can adopt.

Adjournment

On motion of Senator Mazza, the Senate adjourned until ten o'clock and thirty minutes in the morning.

WEDNESDAY, FEBRUARY 24, 2010

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. 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. 524. An act relating to interference with or cruelty to a guide dog.

H. 763. An act relating to establishment of an agency of natural resources' river corridor management program.

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

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 245. House concurrent resolution congratulating the League of Women Voters on its 90th anniversary.

H.C.R. 246. House concurrent resolution honoring book artist Lucy Swope of West Fairlee.

H.C.R. 247. House concurrent resolution honoring Lyndon Corey for his half-century of remarkable leadership and service at the Fairfield Fire Department.

H.C.R. 248. House concurrent resolution congratulating Healthy Living Natural Foods Market of South Burlington on winning the Vermont Grocers' Association Retailer of the Year award.

H.C.R. 249. House concurrent resolution honoring Theodore Manazir for his exemplary 29 years of public service as a member of the South Burlington school board upon his retirement from the board.

H.C.R. 250. House concurrent resolution honoring the exemplary performance of the volunteer fire departments of Sheldon, Swanton, Enosburg, Cambridge, Fairfield, Highgate, and St. Albans Town in combating the August 2009 RockTenn Mill blaze in Sheldon Springs.

H.C.R. 251. House concurrent resolution in memory of Shoreham firefighter Peter James Coe.

H.C.R. 252. House concurrent resolution celebrating the 25th anniversary of the inauguration of Vermont's first woman governor, Madeleine May Kunin.

H.C.R. 253. House concurrent resolution congratulating the 2009 Black River High School Presidents boys' soccer team on winning the school's third consecutive Division IV championship.

H.C.R. 254. House concurrent resolution in memory of Colchester Selectman Brian William McNeil.

H.C.R. 255. House concurrent resolution honoring the towns and citizens of Dover, Whitingham, and Wilmington for their creativity in establishing a mutually beneficial economic development model that other communities can adopt.

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

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 291.

By Senator Campbell,

An act relating to mediation in foreclosure proceedings.

To the Committee on Judiciary.

Bills Referred

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

H. 524.

An act relating to interference with or cruelty to a guide dog.

To the Committee on Judiciary.

H. 763.

An act relating to establishment of an agency of natural resources' river corridor management program.

To the Committee on Natural Resources and Energy.

Consideration Interrupted by Recess

S. 289.

Senate committee bill entitled:

An act relating to approval for continued operation of the Vermont Yankee nuclear power station.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator Scott, moved to commit the bill to the Committee on Economic Development, Housing and General Affairs, which was disagreed to on a roll call, Yeas 6, Nays 24.

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

Roll Call

Those Senators who voted in the affirmative were: Brock, Flory, Mazza, Mullin, Scott, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Thereupon, pending the question, Shall the bill be read a third time?, on motion of Senator Shumlin the Senate recessed until one o'clock and forty-five minutes in the afternoon.

Called to Order

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

Consideration Resumed; Third Reading Refused

S. 289.

Consideration was resumed on Senate bill entitled:

An act relating to approval for continued operation of the Vermont Yankee nuclear power station.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Mullin, Brock, Flory and Scott move to amend the bill as follows:

First: In Sec. 1, by striking out subsections (d) through (f) and inserting in lieu thereof the following:

(d) Under current law, until the general assembly acts under 30 V.S.A. § 248(e)(2), the public service board – the expert body created by the general assembly to make evidence-based determinations on matters relating to electric power – cannot issue a final order in its pending proceedings in Docket No. 7440 on the questions of continued operation of the VYNPS and storage of spent fuel at the station beyond the currently scheduled closure date.

(e) In accordance with 30 V.S.A. § 248, in its decision in the pending proceedings, the public service board will consider the need for electric energy from the VYNPS, the consistency of the station with state energy planning, the issues of reliability and electric system stability, the economic benefit of the VYNPS and the power it generates to the state and its residents, and the other criteria required by statute.

(f) The general assembly should make its determinations regarding the continued operation of the VYNPS and storage of spent fuel at the station so that the public service board may complete its ongoing proceedings, apply its professional expertise, and issue a final order in Docket No. 7440 that is based on the evidence before it.

Second: By striking out Secs. 2 and 3 and inserting in lieu thereof new Secs. 2 and 3 to read as follows:

Sec. 2. VERMONT YANKEE; CONTINUED OPERATION; APPROVAL

(a) Provided that each of the conditions contained in subsection (b) of this section is met, the general assembly:

(1) determines that continued operation of the Vermont Yankee Nuclear Power Station (VYNPS or the station) for up to 20 years following its currently scheduled closure date of March 21, 2012, will promote the general welfare of this state; and

(2) finds that storage of spent nuclear fuel derived from the operation of the VYNPS for up to 20 years following the currently scheduled closure date will promote the general good of this state.

(b) The general assembly approves until up to March 21, 2032, the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the operation of the station, provided that each of the following conditions is met:

(1) By March 1, 2011, Entergy Nuclear Vermont Yankee, LLC (ENVY), the station's owner, executes a power purchase agreement (PPA) with Vermont's two largest investor-owned retail electricity providers that, starting in 2012, commits at least 115 MW of the output of the VYNPS to such providers for the period of continued operation of the station approved by the public service board at a price not to exceed 125 percent of the price currently paid by such providers under the existing PPA approved by the board in Docket No. 6545.

(2) By June 30, 2010, ENVY shall obtain approval from the Vermont public service board of an ongoing reliability and maintenance plan for the VYNPS that meets at least each of the following:

(A) The plan provides for a full inspection within six months of the plan's approval of all aboveground and underground structures, components, facilities and pipes, and periodic inspection of the same at a frequency deemed necessary by the Vermont department of health. For the purpose of this section, the term "underground" includes all structures, components, facilities, and pipes that are below grade whether they are in contact with earth or in a concrete vessel.

(B) The plan provides for prompt repair or replacement of all structures, components, facilities and pipes that are identified through an inspection under subdivision (2)(A) of this subsection as requiring repair or replacement.

(C) The plan ensures compliance with all recommendations of the Reliability Assessment of the Vermont Yankee Nuclear Facility (Nuclear Safety Associates, Dec. 22, 2008) and the Report of the Public Oversight Panel on the Comprehensive Reliability Assessment of the Vermont Yankee Nuclear Power Plant (March 17, 2009).

(3) ENVY shall implement the plan required by subdivision (2) of this subsection in accordance with the terms of the public service board's approval.

(4) ENVY shall be liable to pay, within 30 days of receipt of an invoice, the reasonable costs of the department of health, the department of public service, and the agency of natural resources in inspecting and monitoring the VYNPS. This liability shall continue after the VYNPS ceases operation with respect to inspection and monitoring of the condition of and postclosure activities at the VYNPS site and environs. In the event that the reasonableness of such costs is disputed, the public service board shall have jurisdiction to resolve such dispute.

(5)(A) By March 1, 2011:

(i) ENVY shall provide the public service board with the written agreement of Entergy Corporation of New Orleans, Louisiana (Entergy Corp.), the ultimate parent of ENVY, to guarantee the full funding of all postclosure activities necessary at the VYNPS, including decommissioning of the station, on-site management of spent fuel, and return of the site to a "greenfield" condition as defined by the public service board in its order of June 13, 2002, Docket No. 6545; and

(ii) ENVY shall obtain, after notice and opportunity for hearing, the board's approval of the form and terms of such guarantee.

(B) A refusal of Entergy Corp. to provide the guarantee required by this subdivision (5) shall be considered noncompliance by ENVY with this subdivision.

(6) Notwithstanding 30 V.S.A. § 107 or any other provision of law, the following is prohibited: a transfer of a controlling interest in ENVY or Entergy Nuclear Operations, Inc. (ENO), the operator of the station, unless each of the following applies:

(A) Entergy Corp. remains liable with respect to the guarantee required by subdivision (5) of this subsection.

(B) The new owner of ENVY or ENO or both makes the same guarantee required by subdivision (5) of this subsection and is independently liable with respect to that guarantee.

(7) From March 21, 2012, until the end of the period of continued operation of the VYNPS approved by the public service board, ENVY shall continue to fund the clean energy development fund established under 10 V.S.A. § 6523 in an annual amount determined acceptable by the board, to be no less than the amount paid by ENVY under memoranda of understanding with respect to the VYNPS approved by the board prior to January 1, 2010. ENVY shall obtain the public service board's approval of such annual amount on or before March 1, 2011.

(8) The VYNPS shall obtain from the public service board and any other agencies such certificates, permits, and approvals related to continued operation of the VYNPS and storage of spent fuel at the VYNPS as are required by law.

(c) This act does not require the public service board to approve the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the continued operation of the VYNPS beyond March 21, 2012. However, if the board determines to issue such approval, the board shall include the conditions of subdivisions (b)(1) through (7) of this section in any such approval. The board may include such other conditions as it reasonably deems appropriate, including conditions that are more stringent than those required by subsection (b) of this section.

Sec. 3. EFFECTIVE DATE; APPLICATION TO PENDING PROCEEDINGS

(a) This act shall take effect on passage.

(b) The public service board may complete its pending proceedings in Docket No. 7440 and its consideration of all issues under the relevant statutes, including the need for electric energy from the VYNPS, the consistency of the station with state energy planning, reliability and electric system stability, and the economic benefit of the VYNPS and the power it generates to the state and its residents. The board may issue a final order in Docket No. 7440.

(c) Notwithstanding 1 V.S.A. §§ 213 and 214, this act shall apply to proceedings pending before the public service board as of this act's effective date.

Which was disagreed to on a roll call, Yeas 5, Nays 25.

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

Roll Call

Those Senators who voted in the affirmative were: Brock, Flory, Mullin, Scott, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Flory, Brock, Mullin and Scott move to amend the bill as follows:

First: In Sec. 1, by striking out subsections (d) through (f) and inserting in lieu thereof the following:

(d) Whether or not the VYNPS continues operation after March 21, 2012, the station will not operate indefinitely.

(e) Whenever the VYNPS ceases operation, its contribution to Vermont's energy supply – currently about one-third of the electricity consumed in the state – will need to be replaced.

(f) Replacement of VYNPS power is likely to increase reliance on the spot market for electric energy, therefore exposing the state to sudden and unanticipated price fluctuations that are beyond Vermonters' control, the threat of foreign imposed oil embargoes, and a potential increase in Vermont's carbon footprint in a state proud to have the lowest carbon footprint in the nation.

(g) President Obama has proposed that the nation rejuvenate nuclear power in a new direction through the construction of new plants that are better constructed, more environmentally sensitive, and more efficient.

(h) President Obama has proposed that the federal fiscal year 2011 budget for the U.S. Department of Energy include an additional \$36 billion in loan guarantees for the construction of nuclear power plants, bringing the total allocated amount for this purpose to \$54 billion.

(i) The VYNPS site in Vernon contains sufficient space for a second nuclear power plant, and is an ideal location to build a new modern and physically more compact nuclear power plant that could replace the power the current plant generates upon completion of construction and issuance of a federal operating license and state certificate of public good, and serve Vermonters for decades into the future.

(j) Access to a reasonable portion of the federal loan guarantee money for the construction of new nuclear power plants would provide an ideal financial incentive for prospective owners.

(k) The public service board could open a docket to determine the entity to be the owner of a new nuclear plant that would include extremely detailed, professional and unbiased scrutiny of the financial and technical resources, and prior nuclear power industry history, of any potential owner.

(l) A full contingent of nuclear engineers and technicians is presently at work in Vernon.

(m) The Vermont economy needs to retain these jobs and needs the support for economic growth that would be achieved through the creation of new quality jobs at the VYNPS site.

Second: By striking out Secs. 2 and 3 in their entirety and inserting in lieu thereof new Secs. 2, 3 and 4 to read as follows:

Sec. 2. ADDITIONAL NUCLEAR POWER PLANT AT VERNON, VERMONT

(a) No later than March 1, 2011, the public service board shall issue a request for proposals and open and complete a docket to select a potential owner and operator of a second nuclear generation plant to be located in Vernon on the site of Vermont Yankee Nuclear Power Station (VYNPS). In selecting such an owner and operator, the board shall apply the same standards as it would apply under 30 V.S.A. § 231 to a person or entity desiring to own or operate a business over which the board has jurisdiction, shall ensure compliance with state energy policy under 30 V.S.A. § 202a, and may consider such other factors as it deems relevant and appropriate. The board's review under this subsection shall include scrutiny of the financial and technical resources, and prior nuclear power industry history, of any such owner and operator.

(b) The owner and operator selected under subsection (a) of this section shall subsequently seek approval of a second nuclear generation plant at the site of the VYNPS under 30 V.S.A. § 248 and all other applicable statutes and regulations.

(c) The governor and commissioner of public service are directed to make every reasonable effort to:

(1) identify and work with potential owners and operators of a second nuclear plant at the site of the VYNPS;

(2) support approval of such a plant, provided that it conforms with applicable law and regulation; and

(3) advocate to Congress to reserve the amount of \$2 billion in federal loan guarantees for seed financial backing to construct such a second nuclear power plant at the site of the VYNPS.

(d) The general assembly urges the Vermont congressional delegation to make every reasonable effort to reserve the amount of \$2 billion in federal loan guarantees for seed financial backing to construct a second nuclear power plant at the site of the VYNPS.

Sec. 3. VERMONT YANKEE; CONTINUED OPERATION; APPROVAL

(a) In light of Secs. 1 and 2 of this act, the general assembly:

(1) determines that continued operation of the Vermont Yankee Nuclear Power Station (VYNPS) following its currently scheduled closure date of March 21, 2012, will promote the general welfare of this state; and

(2) finds that storage of spent nuclear fuel derived from the operation of the VYNPS following its currently scheduled closure date will promote the general good of this state,

(3) provided that such continued operation and storage of spent fuel nuclear fuel are allowed only until such time as a second nuclear generation plant at the VYNPS goes into service or 10 years from the currently scheduled closure date, whichever is earlier.

(b) The general assembly approves the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the continued operation of the VYNPS provided that each of the following conditions is met:

(1) Such continued operation and storage of spent nuclear fuel are authorized only until the earlier of:

(A) the date a second nuclear generation plant at the VYNPS goes into service; or

(B) March 21, 2022.

(2) By March 1, 2011, Entergy Nuclear Vermont Yankee, LLC (ENVY), the station's owner, executes a power purchase agreement (PPA) with Vermont's two largest investor-owned retail electricity providers that, starting in 2012, commits at least 115 MW of the output of the VYNPS to such providers for the period of continued operation of the station approved by the public service board at a price not to exceed 125 percent of the price currently paid by such providers under the existing PPA approved by the board in Docket No. 6545.

(3) By June 30, 2010, ENVY shall obtain approval from the Vermont public service board of an ongoing reliability and maintenance plan for the VYNPS that meets at least each of the following:

(A) The plan provides for a full inspection within six months of the plan's approval of all aboveground and underground structures, components, facilities and pipes, and periodic inspection of the same at a frequency deemed necessary by the Vermont department of health. For the purpose of this section, the term "underground" includes all structures, components, facilities and pipes that are below grade whether they are in contact with earth or in a concrete vessel.

(B) The plan provides for prompt repair or replacement of all structures, components, facilities and pipes that are identified through an inspection under subdivision (2)(A) of this subsection as requiring repair or replacement.

(C) The plan ensures compliance with all recommendations of the Reliability Assessment of the Vermont Yankee Nuclear Facility (Nuclear Safety Associates, Dec. 22, 2008) and the Report of the Public Oversight Panel on the Comprehensive Reliability Assessment of the Vermont Yankee Nuclear Power Plant (March 17, 2009).

(4) ENVY shall implement the plan required by subdivision (3) of this subsection in accordance with the terms of the public service board's approval.

(5) ENVY shall be liable to pay, within 30 days of receipt of invoice, the reasonable costs of the department of health, the department of public service, and the agency of natural resources in inspecting and monitoring the VYNPS. This liability shall continue after the VYNPS ceases operation with respect to inspection and monitoring of the condition of and post-closure activities at the VYNPS site and environs. In the event that the reasonableness of such costs is disputed, the public service board shall have jurisdiction to resolve such dispute.

(6) (A) By March 1, 2011:

(i) ENVY shall provide the public service board with the written agreement of Entergy Corporation of New Orleans, Louisiana (Entergy Corp.), the ultimate parent of ENVY, to guarantee the full funding of all post-closure activities necessary at the VYNPS, including decommissioning of the station, on-site management of spent fuel, and return of the site to a "greenfield" condition as defined by the public service board in its order of June 13, 2002, Docket No. 6545; and

(ii) ENVY shall obtain, after notice and opportunity for hearing, the board's approval of the form and terms of such guarantee.

(B) A refusal of Entergy Corp. to provide the guarantee required by this subdivision (6) shall be considered noncompliance by ENVY with this subdivision.

(7) Notwithstanding 30 V.S.A. § 107 or any other provision of law, the following is prohibited: a transfer of a controlling interest in ENVY or Entergy Nuclear Operations, Inc. (ENO), the operator of the station, unless the each of the following applies:

(A) Entergy Corp. remains liable with respect to the guarantee required by subdivision (6) of this subsection.

(B) The new owner of ENVY or ENO or both makes the same guarantee required by subdivision (6) of this subsection and is independently liable with respect to that guarantee.

(8) From March 21, 2012, until the end of the period of continued operation of the VYNPS approved by the public service board, ENVY shall continue to fund the clean energy development fund established under 10 V.S.A. § 6523 in an annual amount determined acceptable by the public service board, to be no less than the amount paid by ENVY under memoranda of understanding with respect to the VYNPS approved by the board prior to January 1, 2010. ENVY shall obtain the public service board's approval of such annual amount on or before March 1, 2011.

(9) The VYNPS shall obtain from the public service board and any other agencies such certificates, permits, and approvals related to continued operation of the VYNPS and storage of spent fuel at the VYNPS as are required by law.

(c) This act does not require the public service board to approve the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the continued operation of the VYNPS beyond March 21, 2012. However, if the board determines to issue such approval, the board shall include the conditions of subdivisions (b)(1) through (8) of this section in any such approval. The board may include such other conditions as it reasonably deems appropriate, including conditions that are more stringent than those required by subsection (b) of this section.

Sec. 4. EFFECTIVE DATE; APPLICATION TO PENDING PROCEEDINGS

(a) This act shall take effect on passage.

(b) The public service board may complete its pending proceedings in Docket No. 7440 and its consideration of all issues under the relevant statutes, including the need for electric energy from the VYNPS, the consistency of the

station with state energy planning, reliability and electric system stability, and the economic benefit of the VYNPS and the power it generates to the state and its residents. The board may issue a final order in Docket No. 7440.

(c) Notwithstanding 1 V.S.A. §§ 213 and 214, this act shall apply to proceedings pending before the public service board as of this act's effective date.

Which was disagreed to on a roll call, Yeas 6, Nays 24.

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

Roll Call

Those Senators who voted in the affirmative were: Brock, Carris, Flory, Mullin, Scott, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Campbell, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Thereupon, the pending question, Shall the bill be read a third time?, was disagreed to on a roll call, Yeas 4, Nays 26.

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

Roll Call

Those Senators who voted in the affirmative were: Flory, Mazza, *Scott, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Mullin, Nitka, Racine, Sears, Shumlin, Snelling, White.

*Senator Scott explained his vote as follows:

“There is no debate... Vermont Yankee has made bad decisions and has been a less than perfect partner with the State. Their breach of trust with people of Vermont leaves a terrible scar on their relationship with all of us. In my mind there are still many, many unanswered questions about whether we should relicense the plant for another 20 years.

Today, I and others have tried many avenues in order to be responsible and compromising before the final outcome ... to no avail.

I cannot stand by and vote to support a blatant political power play. My “yes” vote is to remind my colleagues that there is more at stake today than scoring political points. The future of 600 jobs, affordable power and the Vermont economy should not be decided in a rush to judgment. Unfortunately for the people of Vermont, politics came before a responsible process. This is not the way we should serve Vermonters. Vermonters deserve better.”

Message from the House No. 26

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 Senate proposal of amendment to the following House bill:

H. 533. An act relating to military parents’ rights.

And has severally concurred therein.

Message from the House No. 27

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. 607. An act relating to codifying and amending the charter of the Chittenden County Transportation Authority.

H. 622. An act relating to solicitation by prescreened trigger lead information.

H. 761. An act relating to authorization of High-Speed Intercity Passenger Rail Program grants.

H. 765. An act relating to establishing the Vermont agricultural innovation authority.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eleven o’clock in the morning.

THURSDAY, FEBRUARY 25, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 292.

By the Committee on Judiciary,

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

Bills Referred

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

H. 607.

An act relating to codifying and amending the charter of the Chittenden County Transportation Authority.

To the Committee on Government Operations.

H. 622.

An act relating to solicitation by prescreened trigger lead information.

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

H. 761.

An act relating to authorization of High-Speed Intercity Passenger Rail Program grants.

To the Committee on Transportation.

H. 765.

An act relating to establishing the Vermont agricultural innovation authority.

To the Committee on Agriculture.

Senate Resolution Placed on Calendar**S.R. 20.**

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

By Senators Racine, Cummings, Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Flanagan, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Sears, Shumlin, Snelling, Starr and White,

S.R. 20. Senate resolution urging President Barack Obama to initiate negotiations for a nuclear weapons abolition treaty.

Whereas, nuclear weapons continue to pose a threat to civilization, the human species, and life itself; and more nations are seeking to develop them while international terrorists want to acquire them, and

Whereas, former Secretaries of State Henry Kissinger and George Shultz, former Secretary of Defense William Perry, and former Chair of the United States Senate Armed Services Committee Sam Nunn have acknowledged the threat that nuclear weapons pose, and they have repeatedly called for the complete abolition of all nuclear weapons, and

Whereas, United States taxpayers spend over \$52 billion each year for nuclear weapons programs, resources which could be better used to rebuild our schools, roads, and bridges; create a renewable energy economy; and put people back to work, and

Whereas, the Cold War, the reason for the buildup of nuclear stockpiles, ended 20 years ago, but there remain thousands of nuclear weapons poised to unleash in a moment's notice enough destructive power to end most of life on earth, and

Whereas, President Obama has declared his intention to work toward worldwide abolition of these most destructive of weapons, and President Medvedev of Russia and he have agreed the weapons must be eliminated, and

Whereas, the legal cornerstone of international nuclear disarmament, the Nuclear Non-Proliferation Treaty (NPT), will be the subject of an international review conference starting in April 2010 at the United Nations, and

Whereas, the United States and other nations with nuclear weapons have an unfulfilled obligation under Article VI of the NPT to conduct negotiations on nuclear disarmament in good faith, *now therefore be it*

Resolved by the Senate:

That the Senate of the state of Vermont urges the President of the United States to present to the U.N. NPT Review Conference in April 2010 a plan for starting negotiations which will lead to a worldwide mutual and verifiable nuclear weapons abolition treaty, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to the President of the United States and to the Vermont Congressional Delegation with a request that it be read into the Congressional Record.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the resolution was placed on the Calendar for action the next legislative day.

Bill Passed

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

S. 255. An act relating to an amendment to the charter of the Chittenden County Transportation Authority.

Third Reading Ordered

H. 517.

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

An act relating to approval of an amendment to the charter of the Village of Enosburg Falls.

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.

Bills Amended; Third Readings Ordered

S. 150.

Senator Kitchel, for the Committee on Transportation, to which was referred Senate bill entitled:

An act relating to increasing the fine for illegally using parking reserved for disabled persons.

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

Sec. 1. 23 V.S.A. § 304a(e) is amended to read:

(e) A person, other than a person with a disability, who for his or her own purposes parks a vehicle in a space for persons with disabilities shall be fined ~~\$100.00~~ \$200.00 for each violation and shall be liable for towing charges. He or she shall also be liable for storage charges not to exceed \$12.00 per day, and an artisan's lien may be imposed against the vehicle for payment of the charges assessed. The person in charge of the parking space or spaces for persons with a disability or any duly authorized law enforcement officer shall cause the removal of a vehicle parked in violation of this section. A violation of this section shall be considered a traffic violation within the meaning of chapter 29 of Title 4.

Sec. 2. 20 V.S.A. § 2904 is amended to read:

§ 2904. PARKING SPACES

Any parking facility on the premises of a public building shall contain at least the number of parking spaces required by ADAAG standards, and in any event at least one parking space, as free designated parking for individuals with ambulatory disabilities or blind individuals patronizing the building. The space or spaces shall be accessibly and proximately located to the building. Consideration shall be given to the distribution of spaces in accordance with the frequency and persistence of parking needs. Such spaces shall be designated by a clearly visible sign that cannot be obscured by a vehicle parked in the space, by the international symbol of access and, where appropriate, by the words "van accessible"; shall otherwise conform to ADAAG standards; and shall be in accordance with the standards established under section 2902 of this title.

And that after passage, the title of the bill be amended to read as follows:

"An act relating to parking reserved for disabled persons."

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.

S. 268.

Senator Ayer, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the building bright futures council.

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) While Vermont has a wide range of high-quality programs for families and young children, a report issued by the Smart Start National Technical Assistance Center states, "Vermont's early childhood system might be best described as many diverse patches, or pieces, ready to be linked and sewn together into a New England patchwork quilt."

(2) In order to address issues of overlap and fragmentation, program accountability, and equitable access to services across the state, engaged community members, policy-makers, early childhood service providers, and advocates agree that there is a need for a comprehensive and integrated system for all children below the age of six and their families in Vermont who are in need of and desiring such services.

(3) Research shows that a child's "environment of relationships" has a critical impact on developing brain architecture during the first months and years of life.

(4) There are approximately 39,000 children under the age of six in Vermont, including over 5,500 in poverty, 11,000 living in single-parent households, 20,489 living in two-parent households with both parents in the labor force, and approximately 1,300 young children with developmental delays.

(5) An estimated 23,000 children under the age of six are enrolled full- or part-time in over 1,900 registered or licensed child care programs funded by a combination of parent fees and public dollars such as the Child Care Financial Assistance Program and the Education Fund. Programs that receive no public funds generally have little to no formal connection to an overall early childhood system with established goals and policies for addressing the needs of young children.

(6) In addition to the care by their parents and families, thousands of Vermont children from a range of socioeconomic backgrounds receive services, support, or both from state, federal, and private programs. Many children are served by multiple programs with no mechanism in place to ensure a holistic, family-centered approach to service delivery. Early childhood services are important to the economic well-being of families

throughout the state. They have a positive impact on the state's labor supply and influence the overall economic competitiveness of the state.

(7) Section 642B of the federal Improving Head Start for School Readiness Act of 2007 mandates that the governor "designate or establish a council to serve as the State Advisory Council on Early Childhood Education and Care for children from birth to school entry, and the Governor may designate an existing entity in the State to serve as the State Advisory Council."

(8) In November 2009, the building bright futures state council adopted a conceptual framework based on the work of Dr. Jack Shonkoff, a Harvard University professor and one of the nation's foremost experts on early childhood learning.

Sec. 2. 33 V.S.A. chapter 46 is added to read:

CHAPTER 46. BUILDING BRIGHT FUTURES COUNCIL

§ 4601. DEFINITIONS

As used in this chapter:

(1) "Early care, health, and education" means all services provided to families expecting a child and to children up to the age of six, including child care, family support, early education, mental and physical health services, nutrition services, and disability services.

(2) "Regional council" means a regional entity linked to the state building bright futures council to support the creation of an integrated system of early care, health, and education at the local level.

§ 4602. BUILDING BRIGHT FUTURES COUNCIL

(a) The building bright futures program shall be governed by a statewide council comprising no more than 23 members. The building bright futures council's membership shall be as follows:

- (1) the secretary of human services or designee;
- (2) the secretary of commerce and community development or designee;
- (3) the commissioner of education;
- (4) the commissioner for children and families;
- (5) the commissioner of health;
- (6) the commissioner of mental health;

(7) two members of the house of representatives, appointed by the speaker of the house;

(8) at least one but no more than two members of the senate, appointed by the senate committee on committees;

(9) the Head Start collaboration office director; and

(10) 12 at-large members selected on the basis of their commitment to early childhood well-being and representing a range of perspectives and geographic diversity. One of the at-large members shall be a representative of a local Head Start program.

(b) In the event of a vacancy in one of the at-large member positions on the council, the remaining members shall endeavor to fill the vacancy with an individual representing a perspective or geographic area not currently represented on the council.

(c) Technical assistance to the council shall be provided by staff within the departments of health, of education, and for children and families.

(d) For council meetings held when the general assembly is not in session, the legislative members of the council shall be entitled to per diem compensation and reimbursement of expenses in accordance with section 406 of Title 2. Members of the council who are not state employees or whose participation is not supported through their employment or association may be entitled to compensation and reimbursement for expenses for attending meetings of the council under section 1010 of Title 32 to the extent funds are available.

(e) The council shall function as a public-private partnership with the ability to raise and disburse funds and shall be exempt from all Vermont taxation; provided, however, that the council shall be subject to Vermont taxation on income that is subject to federal taxation under Sections 511 and 514 of the Internal Revenue Code.

(f) The council shall establish and maintain relationships with regional councils providing regional capacity to further the council's goals.

§ 4603. POWERS AND DUTIES

The council established by section 4602 of this title shall have the following powers and duties necessary and appropriate to effectuating the purposes of this chapter:

(1) Advise the administration and general assembly on the status and needs of the early care, health, and education system by conducting a review of the status of young children in Vermont and the care, health, and education

services and systems that support them and by submitting a report every two years to the governor and general assembly regarding the findings and activities of the building bright futures program.

(2) Monitor overall system performance by regularly tracking and reporting system data on the well-being of young children and the performance of the system of care related to the council's commitments to children and selected indicators.

(3) Develop an early care, health, and education system plan for Vermont to serve as the basis for policy and funding recommendations.

(4) Review and formulate recommendations for amendments or revisions to policies, rules, or regulations that may impede the ability to address state and local priorities and the ability to ensure system effectiveness.

(5) Work with the secretaries of human services and of commerce and community development and the commissioner of education to ensure the coordination of existing budgets and policies that affect the care, health, and education of young children.

(6) Work with the agencies of human services and of commerce and community development, the department of education, and the regional councils to coordinate and integrate the development of an early childhood budget that reflects alignment of funding with priorities identified in the system plan.

(7) Contract with state agencies and departments to deliver services as agreed upon.

(8) Pursue and accept funding from diverse sources outside of state government to sustain, expand, and enhance the early care, health, and education system according to the early care, health, and education system plan.

(9) Disburse funds raised through fund development activities in accordance with priorities defined in the system plan.

(10) Increase the instances where the council convenes members of the child care community, medical community, education community, and other organizations, as well as state agencies serving young children, to ensure that families receive quality services in the most efficient and cost-effective manner.

(11) Work within the budget process to help ensure effective and efficient allocation of resources for early care, health, and education, and to identify and reduce duplication of services.

(12) Work with state agencies that provide early childhood services to avoid duplication of services by improving coordination across agencies.

(13) Select the key indicators to be tracked in early childhood and identify priority strategies to improve outcomes.

(14) Make sure children from birth to six years of age are included in data systems being developed by the department of education and in other state efforts aimed at streamlining and coordinating state services.

(15) Monitor and analyze data to assess progress in achieving outcomes and make recommendations for any necessary adjustments.

(16) Report to the governor and the legislative committees of jurisdiction during the first month of each legislative biennium on progress toward outcomes and recommendations for priorities for the biennium.

§ 4604. LIMITATION OF SCOPE

Nothing in this chapter shall be construed to supersede or usurp the statutory powers or authority of any state agency or department or any school district.

Sec. 2. COMPOSITION OF COUNCIL

The members of the building bright futures council serving as of the effective date of this act shall continue to serve on the council after that date and shall adopt bylaws detailing the council's governance and procedures.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

Senator Bartlett, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Government Operations with the following amendment thereto:

In Sec. 2, 33 V.S.A. § 4602, by striking out subsection (e) in its entirety and inserting in lieu thereof a new subsection (e) to read as follows:

(e) The council shall function as a public-private partnership with the ability to raise and disburse funds.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Consideration Postponed

Senate bill entitled:

S. 117.

An act relating to the date of the primary election.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Third Reading Ordered

J.R.S. 50.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred joint Senate resolution entitled:

Joint resolution urging expedited federal initiation of the National Environmental Policy Act process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

Reported that the joint resolution ought to be adopted.

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

Bill Amended; Third Reading Ordered; Rules Suspended; Bill Passed

S. 288.

Senator Cummings, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the Vermont recovery and reinvestment act of 2010.

Reported recommending that the bill be amended as follows:

First: In Sec. 11, by striking out subdivision (b) (relating to the \$1,000,000.00 appropriation to the Vermont jobs fund as being contingent upon the availability of funds under the clean energy development fund for the entrepreneur's seed capital fund) in its entirety.

Second: By striking out Sec. 22 (relating to the transferability of tax credits to insurers under the downtown and village development program) in its entirety.

Third: By striking out Sec. 23 (relating to the increase of the estate tax exclusion from \$2,000,000.00 to \$3,500,000.00) in its entirety.

Fourth: By striking out Secs. 28-36 (relating to a simplified licensing process for certain commercial lenders) in their entirety.

Fifth: In Sec. 37, by striking out subdivisions (1), (2), and (3) (relating to certain effective dates) in their entirety.

And by renumbering the remaining sections to be numerically correct.

Senator Bartlett, for the Committee on Appropriations, to which the bill was referred, reported the same without recommendation.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendations of amendment were collectively agreed to, and pending the question, Shall the bill be read the third time?, Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs, moved to amend the bill in Sec. 15(f), after the words "media, visual, and performing arts;" by adding the words the Johnson State College program which has produced five films to date exploring the history of various Vermont counties;

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Ayer and Giard, moved to amend the bill in Sec. 10(b) by striking out the words "for-profit business" and inserting in lieu thereof the words businesses and non-profit health care organizations

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs, moved to amend the bill as follows:

First: In Sec. 4, subsection (a), in the last sentence, by striking out the following: "§ 8079(f)" and by inserting in lieu thereof the following: § 8079(e)

Second: In Sec. 5, subsection (b), in the first sentence, after the words "when combined with the" by adding the word proposed

Third: In Sec. 6, subsection (a), in the last sentence, by striking out the words "This appropriation" and inserting in lieu thereof the words The \$300,000.00 appropriation made in this subsection also

Fourth: In Sec. 7, subsection (a), after the last sentence, by adding a new sentence to read as follows: With this appropriation, the agricultural debt consolidation program is expected to leverage \$21,000,000.00 in loan activity.

Fifth: In Sec. 8, in subsection (a), after the first sentence, by adding a new sentence to read as follows: This appropriation supplements the \$100,000.00 appropriation made to the program pursuant to No. 54 of the Acts of 2009.

Sixth: In Sec. 11, by adding a new subsection (b) to read as follows:

(b) The appropriation made in subsection (a) of this section supplements the \$1,000,000.00 appropriation made to the Vermont jobs fund pursuant to No. 54 of the Acts of 2009. To date, with \$1,400,000.00 in subsidy funding (both state and ARRA funds), VEDA has been able to buy down the interest rate on commercial loans in the aggregate amount of approximately \$17,600,000.00. The proceeds of those loans have generated approximately \$58,000,000.00 of economic activity and, of that amount, have had a stimulative economic effect of \$28,000,000.00.

Seventh: In Sec. 14(b), after the last sentence, by adding a new sentence to read as follows: In addition to financing, community capital of Vermont provides post-loan technical assistance grants for specialized consulting services in the areas of marketing, financial management, inventory management, and human resources.

Eighth: In Sec. 15(b), in the first sentence, by striking out the following: “2010” and by inserting in lieu thereof the following: 2011

Ninth: In Sec. 16(a), in the first sentence, by striking out the following: “University of Vermont’s initiative for rural emergency medical services” and inserting in lieu thereof the following: Vermont Technical College

Tenth: By striking out Sec. 18 in its entirety and inserting in lieu thereof a new Sec. 18 to read as follows:

Sec. 18. CEDF; ARRA FUNDS; VERMONT SMALL-SCALE RENEWABLE ENERGY INCENTIVE PROGRAM; ENTREPRENEURS’ SEED CAPITAL FUND

The general assembly finds that the Vermont small-scale renewable energy program, 10 V.S.A. § 6523(d)(1)(E)(ii), currently administered by the renewable energy resource center, is expected to receive \$5,275,000.00 in funding in 2010. These funds come from the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No-111-5, and the clean energy development fund established under 10 V.S.A. § 6523. Notwithstanding any other provision of law, the general assembly directs that \$1,000,000.00 of this amount be reallocated from the small-scale renewable energy program to the

entrepreneurs' seed capital fund created under 10 V.S.A. § 291 to conduct ARRA-eligible activities related to "clean energy resources" or "emerging energy-efficient technologies" as those terms are defined under 10 V.S.A. § 6523(b)(1) and (4), respectively.

Eleventh: In Sec. 20, by striking out subsection (i) in its entirety and inserting in lieu thereof a new subsection (i) to read as follows:

(i)(1) Program Outcomes. The joint fiscal office shall prepare a training program performance report based on the following information submitted to it by the Vermont training program which is to be collected from each participating employer then aggregated:

(A) The number of full-time employees six months prior to the training and six months after its completion.

(B) For all existing employees, the median hourly wages prior to and after the training.

(C) The number of "new hires," "upgrades," and "crossovers" deemed eligible for the waivers authorized by statute and the median wages paid to employees in each category upon completion.

(D) A list and description of the benefits required under subdivision (c)(3) of this section for all affected employees, including the number of employees that receive each type of benefit.

(E) The number of employers allowed to pay reduced wages in high unemployment areas of the state, along with the number of affected workers and their median wage.

(2) Upon request by the secretary of commerce and community development, participating employers shall provide the information necessary to conduct the performance report required by this subsection. The secretary, in turn, shall provide such information to the joint fiscal office in a manner agreed upon by the secretary and the joint fiscal office. The secretary and the joint fiscal office shall take such measures to ensure company-specific data and information remains confidential and is not publicly disclosed, except in aggregate form. The secretary shall submit to the joint fiscal office any program outcomes, measurement standards, or other evaluative approaches in use by the training program.

(3) The joint fiscal office shall review the information collected pursuant to subdivisions (1) and (2) of this subsection and prepare a training program performance report with recommendations relative to the program. The joint fiscal office shall submit its first training program performance report on or before January 15, 2011, to the senate committee on economic

development, housing and general affairs and the house committee on commerce and economic development. A second performance report shall be submitted on or before January 15, 2016. In addition to the information evaluated pursuant to subdivision (1) of this subsection, the second report shall include recommendations as to the following:

(A) whether the outcomes achieved by the program are sufficient to warrant its continued existence.

(B) whether training program outcomes can be improved by legislative or administrative changes.

(C) whether continued program performance reports are warranted and, if so, at what frequency and at what level of review.

(4) The joint fiscal office may contract with a consultant to conduct the performance reports required by this subsection. Costs incurred in preparing each report shall be reimbursed from the training program fund up to \$15,000.00.

Twelfth: In Sec. 26, subdivision (2), in the first sentence, after the first comma, by inserting the words funds for making

Thirteenth: In Sec. 26, subdivision (2), in the second sentence, after the words “an extension of that service” by inserting the following: from Hoosick, NY to Bennington,

Fourteenth: In Sec. 27, after the words “is repealed”, by striking out the words “and the remaining subdivisions of that subsection are renumbered accordingly”

Fifteenth: By adding a new section to be numbered Sec. 37 to read as follows:

Sec. 37. COORDINATION OF FARM-TO-PLATE, FARM-TO-SCHOOL, AND FARM-TO-INSTITUTION PROGRAMS

For the purposes of avoiding duplication of administration and better coordinating resources, the Vermont farm-to-plate investment program shall include in its strategic plan for agricultural economic development required by 10 V.S.A. § 330(c)(1), a recommendation for the oversight and coordination of the farm-to-plate investment program established under 10 V.S.A. § 330, the farm-to-school program established under 6 V.S.A. § 4721, and any other farm-to-institution partnerships designed to increase institutional purchases of fresh, locally grown food, such as those initiatives supported with funding under Sec. 9 of this act.

And by renumbering the remaining section to be numerically correct.

Which were collectively agreed to.

Thereupon, third reading of the bill was ordered.

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

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

Rules Suspended; Bill Passed in Concurrence

H. 517.

Pending entry on the Calendar for action tomorrow, on motion of Senator Mazza, the rules were suspended and Senate bill entitled:

An act relating to approval of an amendment to the charter of the Village of Enosburg Falls.

Was placed on all remaining stages of its passage in concurrence forthwith.

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

Rules Suspended; Bills Passed

S. 150.

Pending entry on the Calendar for action tomorrow, on motion of Senator Mazza, the rules were suspended and Senate bill entitled:

An act relating to increasing the fine for illegally using parking reserved for disabled persons.

Was placed on all remaining stages of its passage forthwith.

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

S. 268.

Pending entry on the Calendar for action tomorrow, on motion of Senator Mazza, the rules were suspended and Senate bill entitled:

An act relating to the building bright futures council.

Was placed on all remaining stages of its passage forthwith.

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

Rules Suspended; Joint Resolution Adopted

J.R.S. 50.

Pending entry on the Calendar for action tomorrow, on motion of Senator Mazza, the rules were suspended and Joint Senate resolution entitled:

Joint resolution urging expedited federal initiation of the National Environmental Policy Act process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

Was placed on all remaining stages of its adoption forthwith.

Thereupon, the joint resolution was read the third time and adopted.

Rules Suspended; Bills Messaged

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

S. 150, S. 255, S. 268, S. 288, H. 517.

Rules Suspended; Joint Resolution Messaged

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

J.R.S. 50.

Message from the Governor

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

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-fourth day of February, 2010, he approved and signed a bill originating in the Senate of the following title:

S. 163. An act relating to technical corrections to 2009 sex offender legislation.

Message from the Governor

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

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-fifth day of February, 2010, he approved and signed a bill originating in the Senate of the following title:

S. 286. An act relating to challenges for change.

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, March 9, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 37.

TUESDAY, MARCH 9, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Rebecca Clark of Montpelier.

Pledge of Allegiance

Pages Jasmine Jones and Brandon Garbacik then led the members of the Senate in the pledge of allegiance.

Message from the House No. 28

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. 66. An act relating to including secondary students with disabilities in senior year activities and ceremonies.

H. 725. An act relating to farmers' markets.

H. 764. An act relating to the state teachers' retirement system of Vermont.

H. 766. An act relating to preventing duplication in certain public health records.

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

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

J.R.S. 51. Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Environmental Judge.

And has adopted the same in concurrence.

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

H. 331. An act relating to technical changes to the records management authority of the Vermont State Archives and Records Administration.

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

Message from the House No. 29

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. 658. An act relating to the issuance of certificates of need for home health agencies and addressing patient transportation services in certificate of need applications.

H. 767. An act relating to the livestock care standards advisory council.

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. 77. An act relating to the disposal of electronic waste.

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

The Governor has informed the House that on the February 25, 2010, he approved and signed a bill originating in the House of the following title:

H. 534. An act relating to fiscal year 2010 budget adjustment.

Bills Referred

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

H. 66.

An act relating to including secondary students with disabilities in senior year activities and ceremonies.

To the Committee on Education.

H. 658.

An act relating to the issuance of certificates of need for home health agencies and addressing patient transportation services in certificate of need applications.

To the Committee on Health and Welfare.

H. 725.

An act relating to farmers' markets.

To the Committee on Agriculture.

H. 764.

An act relating to the state teachers' retirement system of Vermont.

To the Committee on Government Operations.

H. 766.

An act relating to preventing duplication in certain public health records.

To the Committee on Health and Welfare.

H. 767.

An act relating to the livestock care standards advisory council.

To the Committee on Agriculture.

Consideration Postponed

Senate bill entitled:

S. 117.

An act relating to the date of the primary election.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Bill Ordered to Lie

Senate bill entitled:

S. 110. An act relating to sheltering livestock.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Judiciary, Senator Sears moved that Senate Rule 49 be suspended in order to

commit the bill to the Committee on Judiciary with the reports of the Committees on Judiciary and on Agriculture *intact*,

Thereupon, pending the question, Shall the bill be recommitted?, Senator Sears requested and was granted leave to withdraw his motion.

Thereupon, pending the reading of the reports of the Committees on Judiciary and on Agriculture, on motion of Senator Shumlin, the bill was ordered to lie.

Senate Resolution Adopted

S.R. 20.

Senate resolution entitled:

Senate resolution urging President Barack Obama to initiate negotiations for a nuclear weapons abolition treaty.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, March 12, 2010.

FRIDAY, MARCH 12, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Douglas Carter of Danville.

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. 488. An act relating to prohibiting the use of felt-soled boots and waders in the waters Vermont.

H. 539. An act relating to amending the charter of the town of Hartford.

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

The House has adopted joint resolutions of the following titles:

J.R.H. 35. Joint resolution urging Congress not to diminish any aspect of the existing state regulatory authority over the insurance industry or consumer protection policy with respect to national banks.

J.R.H. 39. Joint resolution urging Congress not to pursue legislation allowing individuals or small groups to purchase health insurance across state lines or permitting health insurance companies to offer individual or small group health insurance policies to residents of a state if the company is not authorized by that state to offer those policies.

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

The Governor has informed the House that on the March 3, 2010, he approved and signed a bill originating in the House of the following title:

H. 533. An act relating to military parents' rights.

Message from the House No. 31

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. 256. House concurrent resolution honoring family caregivers of persons with Alzheimer's and related diseases on the 2010 Alzheimer's Awareness Day at the state house.

H.C.R. 257. House concurrent resolution honoring Jim Matteau on his retirement from the Windham Regional Commission.

H.C.R. 258. House concurrent resolution in memory of Peter S. Clark of Londonderry.

H.C.R. 259. House concurrent resolution honoring Bonnie West and her family for their dedication to serving the citizens of Jamaica.

H.C.R. 260. House concurrent resolution commending Jennifer Clark for her nursing work in Haiti.

H.C.R. 261. House concurrent resolution in memory of former Jamaica selectboard member David L. Hamilton.

H.C.R. 262. House concurrent resolution honoring Chester selectboard chair Richard Jewett.

H.C.R. 263. House concurrent resolution honoring George Cook for his civic and community leadership in the town of Chester.

H.C.R. 264. House concurrent resolution honoring Irene Wood for her public service on behalf of the town of Chester.

H.C.R. 265. House concurrent resolution honoring Chester town auditor Richard Higley.

H.C.R. 266. House concurrent resolution in memory of Linda Ralph and honoring her proprietorship of the Danby Four Corners Store.

H.C.R. 267. House concurrent resolution congratulating the 2010 Vermont Prudential Spirit of Community Award winners.

H.C.R. 268. House concurrent resolution honoring Norton selectboard chair Franklin D. Henry for over a half-century of outstanding public service.

H.C.R. 269. House concurrent resolution congratulating Hannah Kearney on winning the 2010 women's skiing moguls Olympic gold medal.

H.C.R. 270. House concurrent resolution congratulating Representative Martha P. Heath as a recipient of the New England Board of Higher Education's 2010 David C. Knapp Award for Trusteeship.

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

Message from the House No. 32

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. 237. An act relating to governance of the Vermont state hospital.

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

Message from the House No. 33

A message was received from the House of Representatives by Mr. William M. MaGill, its First 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. 498. An act relating to maintenance of private roads.

H. 578. An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety.

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

Bill Referred to Committee on Appropriations

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:

H. 761.

An act relating to authorization of High-Speed Intercity Passenger Rail Program grants.

Bills Referred

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

H. 237.

An act relating to governance of the Vermont state hospital.

To the Committee on Government Operations.

H. 488.

An act relating to prohibiting the use of felt-soled boots and waders in the waters of Vermont.

To the Committee on Natural Resources and Energy.

H. 498.

An act relating to maintenance of private roads.

To the Committee on Judiciary.

H. 539.

An act relating to amending the charter of the town of Hartford.

To the Committee on Government Operations.

H. 578.

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety.

To the Committee on Government Operations.

Joint 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 Shumlin,

J.R.S. 52. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 12, 2010, it be to meet again no later than Tuesday, March 16, 2010.

Joint Resolution Referred**J.R.H. 35.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging Congress not to diminish any aspect of the existing state regulatory authority over the insurance industry or consumer protection policy with respect to national banks.

Whereas, in 1945, Congress enacted the McCarran-Ferguson Act, 59 Stat. 33, in which section one (15 U.S.C. § 1011) provided “that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States,” and

Whereas, section 2 of the act (15 U.S.C. § 1012) provided that “the business of insurance, and every person engaged therein, shall be subject to the laws of the several States,” and that “No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance,” and

Whereas, the exception to this broad grant of regulatory authority to the states was a proviso that those aspects of the business of insurance not regulated by state law would be subject to federal antitrust law, including the Sherman Act, the Clayton Act, and the Federal Trade Commission Act, and

Whereas, for over six decades, the McCarran-Ferguson Act has successfully continued as the law of the land, and the individual states have demonstrated great competence in regulating the insurance industry, and

Whereas, H.R. 1583, the “Insurance Industry Competition Act of 2009,” was introduced in the current Congress and referred to the House Committee on Financial Services, and

Whereas, this legislation would alter and impinge upon the scope of the states' current exclusive authority over the insurance industry by amending federal law to modify federal jurisdiction with respect to insurance industry competition, and

Whereas, the House-passed version of H.R. 4173, "The Wall Street Reform and Consumer Protection Act of 2009," establishes a federal insurance office which although not specifically intended to preempt state authority over the insurance industry does introduce a new federal regulatory mechanism over insurance that has not previously existed, and

Whereas, the states have fought to retain the authority to adopt consumer protection measures for national banks that are not directly related to the business of banking, and

Whereas, although H.R. 4173 does provide that states may adopt consumer protection policies related to national banks and halts the total monopoly that the U.S. Comptroller of the Currency has been asserting in recent years, the leeway granted to the states remains excessively restricted, and

Whereas, the legislation grants preemption authority to the U.S. Comptroller of the Currency, with respect to a legally adopted state consumer protection policy regarding national banks, that "prevents or significantly interferes with the ability of an insured depository institution chartered as a national bank to engage in the business of banking," and

Whereas, the U.S. Comptroller of the Currency could interpret this language as a broad mandate to preempt state policies designed to protect consumers in their transactions with national banks, and

Whereas, with respect to comprehensive insurance regulation and to state consumer protection policies related to national banks, state regulators, such as the Vermont department of banking, insurance, securities, and health care administration, have a proven record of success, and their jurisdictional authority should not be diminished, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress not to diminish any aspect of the states' existing regulatory authority over the insurance industry or consumer protection policy with respect to national banks, and

Resolved: That the Secretary of State be directed to send a copy of this resolution to Paulette J. Thabault, Commissioner of Banking, Insurance, Securities, and Health Care Administration, and to the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Finance.

Joint Resolution Referred

J.R.H. 39.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging Congress not to pursue legislation allowing individuals or small groups to purchase health insurance across state lines or permitting health insurance companies to offer individual or small group health insurance policies to residents of a state if the company is not authorized by that state to offer those policies.

Whereas, Vermont law has required guaranteed issue of health insurance policies in the small group and individual markets since 1992, which means that an insurer cannot reject a Vermont resident's application for health insurance based on the individual's health status or medical conditions, and

Whereas, Vermont law has required community rating in the small group and individual markets since 1992, and

Whereas, most other states do not require guaranteed issue, community rating, or other consumer protections afforded to Vermont residents by law, and

Whereas, allowing the purchase of health insurance across state lines will likely result in many healthy people purchasing insurance out of state where their policies may be rescinded if they become sick, leading them to purchase guaranteed-issue health insurance policies in Vermont, which would create a very sick Vermont risk pool that would be expensive to insure and would increase the cost of health insurance in Vermont, and

Whereas, Vermont has had mental health parity laws in place since 1997 which provide greater protections than federal and many state laws, and

Whereas, out-of-state insurers are already authorized to sell policies in Vermont and across the United States but some have chosen not to offer health insurance in Vermont's small group and individual health insurance markets because of the requirements of guaranteed issue and community rating, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress not to pursue legislation allowing individuals or small groups to purchase health insurance across state

lines or permitting health insurance companies to offer individual or small group health insurance policies to residents of a state if the company is not authorized by that state to offer those policies, and be it further

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

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Finance.

Consideration Postponed

Senate bills entitled:

S. 77.

An act relating to the disposal of electronic waste.

S. 117.

An act relating to the date of the primary election.

S. 207.

An act relating to handling of milk samples.

S. 259.

An act relating to the tuition to be paid by a designating school district.

S. 292.

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

Bill Ordered to Lie

H. 331.

House bill entitled:

An act relating to technical changes to the records management authority of the Vermont State Archives and Records Administration.

Was taken up.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Shumlin, the bill was ordered to lie.

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By All Members of the House,

By All Members of the Senate,

H.C.R. 256.

House concurrent resolution honoring family caregivers of persons with Alzheimer's and related diseases on the 2010 Alzheimer's Awareness Day at the state house.

By Representative Mrowicki and others,

By Senators Shumlin and White,

H.C.R. 257.

House concurrent resolution honoring Jim Matteau on his retirement from the Windham Regional Commission.

By Representative Olsen,

H.C.R. 258.

House concurrent resolution in memory of Peter S. Clark of Londonderry.

By Representative Olsen,

H.C.R. 259.

House concurrent resolution honoring Bonnie West and her family for their dedication to serving the citizens of Jamaica.

By Representatives Donahue and Grad,

By Senators Cummings, Doyle and Scott,

H.C.R. 260.

House concurrent resolution commending Jennifer Clark for her nursing work in Haiti.

By Representative Olsen,

H.C.R. 261.

House concurrent resolution in memory of former Jamaica selectboard member David L. Hamilton.

By Representative Pellett,

H.C.R. 262.

House concurrent resolution honoring Chester selectboard chair Richard Jewett.

By Representative Pellett,

H.C.R. 263.

House concurrent resolution honoring George Cook for his civic and community leadership in the town of Chester.

By Representative Pellett,

H.C.R. 264.

House concurrent resolution honoring Irene Wood for her public service on behalf of the town of Chester.

By Representative Pellett,

H.C.R. 265.

House concurrent resolution honoring Chester town auditor Richard Higley.

By Representatives Komline and Olsen,

H.C.R. 266.

House concurrent resolution in memory of Linda Ralph and honoring her proprietorship of the Danby Four Corners Store.

By Representative Frank and others,

H.C.R. 267.

House concurrent resolution congratulating the 2010 Vermont Prudential Spirit of Community Award winners.

By Representative Johnson,

By Senators Illuzzi and Kitchel,

H.C.R. 268.

House concurrent resolution honoring Norton selectboard chair Franklin D. Henry for over a half-century of outstanding public service.

By All Members of the House,

By All Members of the Senate,

H.C.R. 269.

House concurrent resolution congratulating Hannah Kearney on winning the 2010 women's skiing moguls Olympic gold medal.

By Representative Frank and others,

H.C.R. 270.

House concurrent resolution congratulating Representative Martha P. Heath as a recipient of the New England Board of Higher Education's 2010 David C. Knapp Award for Trusteeship.

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, March 16, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 52.

TUESDAY, MARCH 16, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

Pages Zivah Solomon and Tanner Starr then led the members of the Senate in the pledge of allegiance.

Message from the House No. 34

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. 88. An act relating to adding a dental assistant to the state board of dental examiners.

H. 647. An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

H. 695. An act relating to definition of premises for award of liquor license.

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. 52. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

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. 88. An act relating to health care financing and universal access to health care in Vermont.

S. 239. An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

Bills Referred to Committee on Finance

Senate bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

S. 226. An act relating to medical marijuana dispensaries.

S. 264. An act relating to the Vermont dairy industry stabilization and health (DISH) program.

Committee Bills Introduced

Senate committee bills of the following titles were severally introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 293.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to state standards for boilers and pressure vessels.

S. 294.

By the Committee on Government Operations,

An act relating to identification in electioneering communications and penalties for campaign finance violations.

S. 295.

By the Committee on Agriculture,

An act relating to the creation of an agricultural development director.

S. 296.

By the Committee on Institutions,

An act relating to sale or lease of the John H. Boylan state airport.

S. 297.

By the Committee on Education,

An act relating to miscellaneous changes to education law.

Bills Referred

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

H. 88.

An act relating to adding a dental assistant to the state board of dental examiners.

To the Committee on Government Operations.

H. 647.

An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

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

H. 695.

An act relating to definition of premises for award of liquor license.

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

Joint 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 Shumlin,

J.R.S. 53. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 19, 2010, it be to meet again no later than Tuesday, March 23, 2010.

Consideration Postponed

Senate bill entitled:

S. 117.

An act relating to the date of the primary election.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Third Readings Ordered

S. 292.

Senate committee bill entitled:

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?,

Senator Sears moved to amend the bill as follows:

First: In Sec. 5, subsection (c), after the words “the department of corrections shall” by adding the following: request that the court

Second: In Sec. 5, subsection (d), in subdivision (1), by striking out the following: “, as of July 1, 2010” and by adding subdivision (3) to read as follows:

(3) The general assembly finds that a contributing factor to the escalating cost of the corrections’ budget is that inmates are held unnecessarily past their minimum sentence because the department of corrections has not located suitable housing for the inmates in the community. While appropriate community housing is an important consideration in release of inmates, the department of corrections shall not use lack of housing as the sole factor in denying furlough to inmates who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony.

Third: In Sec. 8, subsection (b), by striking out the words “achieve a 25 percent reduction in” and inserting in lieu thereof the following: reduce and after the words “detainee population” by adding the following: to 300 persons

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Illuzzi moved to amend the bill by adding a new section to be numbered Sec. 9a to read as follows:

Sec. 9a. 24 V.S.A. § 290(b) is amended to read:

(b) Full-time deputy sheriffs whose primary responsibility is transportation of prisoners and mentally ill persons shall be paid by the state of Vermont. The appointment of such deputies and their salary shall be approved by the governor, or his designee. The executive committee of the Vermont sheriffs association and the executive director of the department of state's attorneys and sheriffs shall jointly have authority for the assignment of position locations in the counties of state paid deputy sheriffs and shall review the county location assignments periodically for efficient use of resources.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

S. 207.

Senator Choate, for the Committee on Agriculture, to which was referred Senate bill entitled:

An act relating to handling of milk samples.

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

Sec. 1. FINDINGS

(a) The preliminary incubation (PI) count of raw milk is one means of testing and detecting hygiene inadequacies during farm production that may not be apparent with a standard plate count (SPC) alone.

(b) Although the information gained from a PI count test may be valuable for detecting potential sanitation problems and as a quality indicator, the test is often not repeatable, even with identical samples. Therefore, the PI count should be evaluated in conjunction with other quality and sanitation indicators, including the SPC count.

(c) The PI count of milk is not required by the pasteurized milk ordinance (PMO) or any Vermont regulation governing milk safety and sanitation. Nonetheless, at least one milk processor purchasing Vermont milk has used the PI count as the sole basis for denying the shipment of milk.

(d) Vermont law provides that a handler doing business in this state who has a contract with a producer for the purchase of dairy products shall not

refuse to purchase dairy products from the producer except for violations of the sanitary regulations or standards applicable to the market in which the dairy product is sold or marketed.

(e) The purpose of this act is to establish that, although the PI count of milk may be used when determining milk quality premium payments and differentials, the PI count cannot serve as the sole basis for rejecting a milk supply.

Sec. 2. 6 V.S.A. § 2816 is added to read:

§ 2816. PRELIMINARY INCUBATION TESTING; REJECTION OF SUPPLY

(a) A handler shall not reject the milk supply of a producer based solely on a preliminary incubation (PI) count.

(b) Notwithstanding subsection (a), a handler may use a preliminary incubation count as a basis for calculating and awarding milk premium or differential payments.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon 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.

Thereupon, Senator Choate, on behalf of the Committee on Agriculture, moved to withdraw the recommendation of amendment.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Choate on behalf of the Committee on Agriculture moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

(a) The preliminary incubation (PI) count of raw milk is one means of testing and detecting hygiene inadequacies during farm production that may not be apparent with a standard plate count (SPC) alone.

(b) Although the information gained from a PI count test may be valuable for detecting potential sanitation problems and as a quality indicator, the test is often not repeatable, even with identical samples. Therefore, the PI count should be evaluated in conjunction with other quality and sanitation indicators, including the SPC count.

(c) The PI count of milk is not required by the pasteurized milk ordinance or any Vermont regulation governing milk safety and sanitation. Nonetheless, at least one milk processor that purchases Vermont milk has used the PI count as the sole basis for denying the shipment of milk.

(d) Vermont law provides that a handler doing business in this state who has a contract with a producer for the purchase of dairy products shall not refuse to purchase dairy products from the producer except for violations of the sanitary regulations or standards applicable to the market in which the dairy product is sold or marketed.

(e) The purpose of this act is to establish that the PI count of cows' milk cannot serve as the sole basis for rejecting a milk supply.

Sec. 2. 6 V.S.A. § 2816 is added to read:

§ 2816. PRELIMINARY INCUBATION TESTING; REJECTION OF SUPPLY

A handler shall not reject the milk supply of a producer based solely on a preliminary incubation count.

Sec. 3. MEETING OR INFORMATION CONCERNING PI COUNTS

The secretary of agriculture, food and markets, or his or her designee shall:

(1) convene a meeting of dairy handlers that purchase Vermont cows' milk to discuss the advisability of using preliminary incubation counts as a basis for producer premium payments or differentials; or, alternatively

(2) deliver relevant information to dairy handlers that purchase Vermont cows' milk concerning the advisability of using preliminary incubation counts as a basis for producer premium payments or differentials.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

S. 259.

Senator Flory, for the Committee on Education, to which was referred Senate bill entitled:

An act relating to the tuition to be paid by a designating school district.

Reported recommending that the bill be amended by adding a new section to be Sec. 2 to read:

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

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.

Consideration Postponed

Senate bill entitled:

S. 77.

An act relating to the disposal of electronic waste.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Third Reading Ordered**H. 607.**

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

An act relating to codifying and amending the charter of the Chittenden County Transportation Authority.

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.

Consideration Postponed

Joint House resolution entitled:

J.R.H. 34.

Joint resolution in support of the New England Secondary School Consortium.

Was taken up.

Thereupon, without objection consideration of the joint resolution was postponed until the next legislative day.

Consideration Postponed

Senate bills entitled:

S. 222.

An act relating to recognition of Abenaki tribes.

S. 283.

An act relating to amending miscellaneous motor vehicle laws, eliminating the motorcycle rider training program advisory committee, and repealing the interstate compact for motor vehicle safety equipment.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

Senate Concurrent Resolutions

The following joint concurrent resolutions, 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, are hereby adopted on the part of the Senate:

By All Members of the Senate,

By Representative Miller and others,

S.C.R. 41.

Senate concurrent resolution in memory of former Representative and Senator Nancy Chard.

By Senators Choate and Kitchel,

By Representatives Reis and South,

S.C.R. 42.

Senate concurrent resolution congratulating Ruth (Riddick) McLaine of St. Johnsbury on her 100th birthday.

By the Committee on Finance,

S.C.R. 43.

Senate concurrent resolution congratulating Julie Brill on her confirmation as a member of the Federal Trade Commission.

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By Representative Stevens and others,

By All Members of the Senate,

H.C.R. 271.

House concurrent resolution commemorating the Green Mountain Club on its centennial anniversary.

By Representative Head and others,

H.C.R. 272.

House concurrent resolution honoring the South Burlington Community Library children's librarian Marje Von Ohlsen.

Adjournment

On motion of Senator Mazza, the Senate adjourned until one o'clock in the afternoon on Wednesday, March 17, 2010.

WEDNESDAY, MARCH 17, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 35

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. 614. An act relating to the regulation of composting.

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

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 271. House concurrent resolution commemorating the Green Mountain Club on its centennial anniversary.

H.C.R. 272. House concurrent resolution honoring the South Burlington Community Library children's librarian Marje Von Ohlsen.

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

The House has considered concurrent resolutions originating in the Senate of the following titles:

S.C.R. 41. Senate concurrent resolution in memory of former Representative and Senator Nancy Chard.

S.C.R. 42. Senate concurrent resolution congratulating Ruth (Riddick) McLaine of St. Johnsbury on her 100th birthday.

S.C.R. 43. Senate concurrent resolution congratulating Julie Brill on her confirmation as a member of the Federal Trade Commission.

And has adopted the same in concurrence.

Bill Referred to Committee on Finance

S. 224.

Senate 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 the establishment of a paint stewardship program.

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 298.

By Senator Miller,

An act relating to approval of amendments to the charter of the city of Burlington.

To the Committee on Government Operations.

Bill Referred

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

H. 614.

An act relating to the regulation of composting.

To the Committee on Natural Resources and Energy.

Consideration Postponed

Senate bill entitled:

S. 117.

An act relating to the date of the primary election.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Third Reading Ordered

J.R.H. 34.

Senator Starr, for the Committee on Education, to which was referred joint House resolution entitled:

Joint resolution in support of the New England Secondary School Consortium.

Reported that the joint resolution ought to be adopted in concurrence

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

Bills Amended; Third Readings Ordered

S. 222.

Senator Miller, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to recognition of Abenaki tribes.

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

Sec. 1. FINDINGS

The general assembly finds the following:

(1) State recognition of Vermont's tribes is necessary in order for the Indian Arts and Crafts Board (IACB) of the Bureau of Indian Affairs to permit them to market their arts and crafts as authentic Indian products and to provide tribal members access to state, federal, and private aid for cultural, artistic, and educational endeavors.

(2) In May 2006, the general assembly passed S.117, Act No. 125, in an effort to recognize the Abenaki people and create a Vermont Commission on Native American Affairs. The act failed to comport with the recognition requirements of the IACB, and therefore prevented Vermont Native Americans from marketing their arts and crafts as authentic Indian works.

(3) Fifteen other states have recognized their resident Native people as American Indian Tribes, without any of those tribes previously or subsequently acquiring federal recognition.

(4) According to a public affairs specialist from the U.S. Bureau of Indian Affairs (BIA) state recognition of Indian tribes plays a very small role in regard to federal recognition. The only exception is when a state recognized a tribe well before 1900.

(5) Recognition of a tribe by a state at this time will play no significant role in any subsequent effort to gain federal tribal recognition.

Sec. 2. 1 V.S.A. § 852 is amended to read:

§ 852. VERMONT COMMISSION ON NATIVE AMERICAN AFFAIRS
ESTABLISHED; AUTHORITY

(a) In order to recognize the historic and cultural contributions of Native Americans to Vermont, to protect and strengthen their heritage, and to address their needs in state policy, programs, and actions, there is hereby established the Vermont commission on Native American affairs (the “commission”).

(b) The commission shall ~~comprise seven members appointed by the governor for two year terms from a list of candidates compiled by the division for historic preservation. The governor shall appoint a chair from among the members of the commission. The division shall compile a list of candidates’ recommendations from the following:~~

~~(1) Recommendations from the Missisquoi Abenaki and other Abenaki and other Native American regional tribal councils and communities in Vermont.~~

~~(2) Applicants who apply in response to solicitations, publications, and website notification by the division of historical preservation:~~

(1) Be composed of the following members, who shall serve for no more than two consecutive three-year terms:

(A) Three members appointed by the Abenaki Nation of Missisquoi, St. Francis Sokoki Band, which is composed of the three Missisquoi Bands.

(B) One member appointed by the Koasek Traditional Band of the Koas Abenaki Nation.

(C) One member appointed by the Nulhegan Band of the Abenaki Nation.

(D) One member appointed by the ELNU Abenaki Tribe of the Koasek.

(E) One member appointed by any additional Abenaki tribe following recognition by the general assembly.

(F) Two or three at-large members to assure an odd number of members on the commission, to be appointed by the other commission members.

(2) Elect a chair to serve for two years.

(c) The commission shall ~~have the authority to assist Native American tribal councils, organizations, and individuals to:~~

(1) Assist Native American tribes recognized by the state to:

(A) Develop and market Vermont Native American fine and performing arts, craftwork, and cultural events in and outside Vermont.

(B) Secure social services, education, employment opportunities, health care, housing, and census information.

~~(2) Permit the creation, display, and sale of Native American arts and crafts and legally to label them as Indian or Native American produced as provided in 18 U.S.C. § 1159(e)(3)(B) and 25 U.S.C. § 305e(d)(3)(B)~~

~~(3) Receive assistance and support from the federal Indian Arts and Crafts Board, as provided in 25 U.S.C. § 305 et seq.~~

~~(4) Become eligible for federal assistance with educational, housing, and cultural opportunities.~~

~~(5) Establish and continue programs offered through the U.S. Department of Education Office on Indian Education pursuant to Title VII of the Elementary and Secondary Education Act established in 1972 to support educational and cultural efforts of tribal entities that have been either state or federally recognized.~~

(2) Assist bands and groups of Native Americans who are unrecognized to organize and develop a representative tribal organization in order to petition for legal tribal recognition by the state.

(3) Review petitions for tribal recognition, and, if satisfied that petitioners have complied with recognition criteria, file with the general assembly a copy of the petition together with a recommendation to recognize the band or group as a recognized tribe.

(4) Develop policies and programs to benefit Vermont's Native American population.

(d) The commission shall meet at least three times a year and at any other times at the request of the chair. The division of historic preservation of the agency of commerce and community development ~~and the department of education~~ shall provide administrative support to the commission.

(e) The commission may seek and receive funding from state, federal, and other sources to assist with its work.

Sec. 3. 1 V.S.A. § 853 is amended to read:

§ 853. RECOGNITION OF ABENAKI PEOPLE

(a) The state of Vermont recognizes ~~the Abenaki people and~~ recognizes all Native American people who reside in Vermont as a minority population.

(b) ~~Recognition of the Native American or Abenaki people provided in subsection (a) of this section shall be for the sole purposes specified in subsection 852(c) of this title and shall not be interpreted to provide any Native American or Abenaki person with any other special rights or privileges that the state does not confer on or grant to other state residents. For the purposes of recognition, a Vermont Native American tribe must demonstrate that it has all of the following:~~

(1) A physical and legal residence in Vermont.

(2) An organized tribal membership roll along with specific criteria that were used to determine membership, including evidence of kinship among tribal members.

(3) Documented traditions, customs, and legends that signify Native American heritage.

(4) A tribal council, a constitution, and a chief.

(5) Been and continues to be recognized by other Native American communities in Vermont as a Vermont Native American band or group.

(6) Been known by state, county, or municipal officials, as a functioning Native American band or group in Vermont.

(7) Not been recognized as a tribe in any other state, province, or nation.

(8) An enduring community presence within the boundaries of Vermont that is documented by archaeology, ethnography, physical anthropology, history, genealogy, folklore, or any other applicable scholarly research and data.

(c) A band or group of Native Americans not identified in subsection (e) of this section may file a petition for recognition with the commission. If after thorough review of the petition and evidence supporting recognition, the commission determines that the petitioning group has complied with the criteria under subsection (b) of this section, the commission shall recommend to the general assembly that the state recognize the tribe.

(d) After a group or band is recognized by the general assembly as a Native American tribe, the band or group may refer to itself as a recognized tribe, and the tribe may appoint a member of that tribe to the Vermont commission on Native American affairs.

(e) Having complied with the criteria in subsection (b) of this section, the following groups or bands are recognized as Native American tribes by the state of Vermont:

(1) The Abenaki Nation of Missisquoi, St. Francis Sokoki Band, composed of the former Missisquoi, St. Francis, and Sokoki Bands.

(2) The Koasek Traditional Band of the Koas Abenaki Nation.

(3) The Nulhegan Band of the Abenaki Nation, historically known as the Northern Coosuk/Memphremagog/Old Philip's Band.

(4) The ELNU Abenaki Tribe of the Koasek.

(f) Native American tribes recognized by the state of Vermont may freely practice their traditional culture, lifeways, arts, language, and religion without interference, provided there is no violation of law.

(g) All documents related to recognition of any Vermont Native American tribe shall be maintained by the division of historic preservation and made available to the public.

(h) This chapter shall not be construed to recognize, create, extend, or form the basis of any right or claim to land or real estate in Vermont for the Abenaki people or any Abenaki individual and shall be construed to confer only those rights specifically described in this chapter. Abenaki tribes and other Vermont Native American tribes and individual members of those tribes are subject to the laws of the state.

Sec. 4. 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 on a roll call, Yeas 27, Nays 0.

Senator Nitka 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, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flory, Giard, Hartwell,

Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

Those Senators absent or not voting were: Flanagan, Illuzzi, Shumlin (presiding).

Consideration Postponed

S. 77.

House proposal of amendment to Senate bill entitled:

An act relating to the disposal of electronic waste.

Was taken up.

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

Sec. 1. LEGISLATIVE FINDINGS

The general assembly finds:

(1) According to the U.S. Environmental Protection Agency, discarded computers, computer monitors, televisions, and other consumer electronics—collectively referred to as e-waste—are the fastest growing portion of the waste stream, growing by approximately eight percent from 2004 to 2005.

(2) Televisions, computers, computer monitors, and printers are prevalent in modern society and contribute significantly to the waste generated in Vermont.

(3) Televisions, computers, computer monitors, and printers contain lead, mercury, and other hazardous substances that pose a threat to human health and the environment if improperly disposed of at the end of the useful life of these products.

(4) The state of Vermont has committed to providing its citizens with a safe and healthy environment and has actively undertaken efforts such as mercury reduction programs to reduce the potential for contamination.

(5) The appropriate recycling of televisions, computers, computer monitors, and printers protects public health and the environment by reducing the potential for the release of heavy metals and mercury from landfills into the environment, consistent with other state initiatives, and also conserving valuable landfill space.

(6) The establishment of a system to provide for the collection and recycling of televisions, computers, computer monitors, and printers in

Vermont is consistent with the state's duty to protect the health, safety, and welfare of its citizens; maintain and enhance the quality of the environment; conserve natural resources; prevent pollution of air, water, and land; and stimulate economic growth.

Sec. 2. 10 V.S.A. chapter 166 is added to read:

CHAPTER 166. COLLECTION AND RECYCLING OF ELECTRONIC DEVICES

§ 7551. DEFINITIONS

For the purposes of this chapter:

- (1) "Agency" means the agency of natural resources.
- (2) "Cathode-ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.
- (3) "Collection" means the aggregation of covered electronic devices from covered entities and includes all the activities up to the time the covered electronic devices are delivered to a recycler.
- (4) "Collector" means a public or private entity that receives covered electronic devices from covered entities and arranges for the delivery of the devices to a recycler.
- (5) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, including a laptop computer, desktop computer, and central processing unit. "Computer" does not include an automated typewriter or typesetter or other similar device.
- (6) "Computer monitor" means a display device without a tuner that can display pictures and sound and is used with a computer.
- (7) "Computer peripheral" means a keyboard or any other device sold exclusively for external use with a computer that provides input or output into or from a computer.
- (8) "Covered electronic device" means a: computer; computer monitor; device containing a cathode ray tube; printer; or television sold to a covered entity. "Covered electronic device" does not include: any motor vehicle or any part thereof; a camera or video camera; a portable or stationary radio; a wireless telephone; a household appliance, such as a clothes washer, clothes dryer, water heater, refrigerator, freezer, microwave oven, oven, range, or dishwasher; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development, or commercial setting; security or anti-terrorism equipment; monitoring and

control instruments or systems; thermostats; hand-held transceivers; a telephone of any type; a portable digital assistant or similar device; a calculator; a global positioning system receiver or similar navigation device; commercial medical equipment that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display that is not separate from the larger piece of equipment; or other medical devices, as the term “device” is defined under 21 U.S.C. § 321(h) of the Federal Food, Drug, and Cosmetic Act, as that section is amended from time to time.

(9) “Covered entity” means any household, charity, or school district in the state; or a business in the state that employs ten or fewer individuals.

(10) “Electronic waste” means a: computer; computer monitor; computer peripheral device containing a cathode ray tube; printer; or television sold to a covered entity. “Electronic waste” does not include: any motor vehicle or any part thereof; a camera or video camera; a portable or stationary radio; a wireless telephone; a household appliance, such as a clothes washer, clothes dryer, water heater, refrigerator, freezer, microwave oven, oven, range, or dishwasher; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development, or commercial setting; security or antiterrorism equipment; monitoring and control instruments or systems; thermostats; handheld transceivers; a telephone of any type; a portable digital assistant or similar device; a calculator; a global positioning system receiver or similar navigation device; commercial medical equipment that contains a cathode ray tube, a cathode ray tube device, a flat panel display, or similar video display that is not separate from the larger piece of equipment; or other medical devices, as the term “device” is defined under 21 U.S.C. § 321(h) of the Federal Food, Drug, and Cosmetic Act, as that section is amended from time to time.

(11) “Manufacturer” means a person who:

(A) Manufactures or manufactured a covered electronic device under its own brand or label for sale in the state;

(B) Sells in the state under its own brand or label covered electronic devices produced by another supplier;

(C) Owns a brand that it licenses or licensed to another person for use on a covered electronic device sold in the state;

(D) Imports covered electronic devices into the United States for sale in the state;

(E) Manufactures covered electronic devices for sale in the state without affixing a brand name; or

(F) Assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (A) through (E) of this subdivision (11), provided that the secretary may enforce the requirements of this chapter against a manufacturer if a person who assumes the manufacturer's responsibilities fails to comply with the requirements of this chapter.

(12) "Market share" means a "manufacturer's market share" which shall be the manufacturer's percentage share of the total weight of covered electronic devices sold in the state as determined by the best available information, which may include an estimate of the aggregate total weight of the manufacturer's covered electronic devices sold in the state during the previous program year based on national sales data.

(13) "Printer" means desktop printers, multifunction printer copiers, and printer fax combinations taken out of service that are designed to reside on a work surface, and include various print technologies, including without limitation laser and LED (electrographic), ink jet, dot matrix, thermal, and digital sublimation, and "multi-function" or "all-in-one" devices that perform different tasks, including copying, scanning, faxing, and printing. Printers do not include floor-standing printers, printers with an optional floor stand, point of sale (POS) receipt printers, household printers such as a calculator with printing capabilities or label makers, or nonstand-alone printers that are embedded into products that are not covered electronic products.

(14) "Program year" means the period from July 1 through June 30.

(15) "Recycler" means a person who accepts electronic waste from covered entities and collectors for the purpose of recycling. A person who takes products solely for reuse, refurbishment, or repair is not a recycler.

(16) "Recycling" means the process of collecting and preparing electronic wastes for use in manufacturing processes or for recovery of useable materials followed by delivery of such materials for use. Recycling does not include destruction by incineration; waste-to-energy incineration, or other such processes; or land disposal.

(17) "Retailer" means a person who sells, rents, or leases covered electronic devices to a person in the state, through any means, including sales outlets, catalogues, the telephone, the Internet, or any electronic means.

(18) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract of a covered electronic device to a person in the state. "Sell" or "sale" does not include the sale, resale, lease, or transfer of used covered electronic devices or a manufacturer's or a distributor's wholesale transaction with a distributor or a retailer.

(19) "Television" means any telecommunications system or device containing a cathode ray tube or other type of display system with a viewable area of greater than four inches when measured diagonally that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

(20) "Transporter" means a person that moves electronic waste from a collector to a recycler.

§ 7552. STANDARD ELECTRONIC WASTE RECYCLING PLAN

(a) Standard plan adoption. Beginning January 1, 2011, the secretary shall adopt a plan for the collection and recycling of all electronic waste in the state. In developing the plan, the secretary shall evaluate existing electronic waste collection opportunities and services in each county to determine whether such opportunities and services are adequate. In making an adequacy determination, the secretary shall consider the geography, population, and population density of each county. If, after completion of an adequacy review, the secretary determines that the collection opportunities in a county are:

(1) inadequate, the secretary may require additional collection activities in that county. Additional collection activities may include additional collection facilities, collection events, or other collection activities identified by the secretary as necessary to achieve the statewide recycling goal. If the secretary requires additional collection activities, the secretary shall consider, as one of the criteria reviewed in selecting additional collection activities, the cost effectiveness of the additional collection activities in achieving the objective of convenient service.

(2) adequate, and that additional collection opportunities are not required.

(b) Standard plan minimum requirements. The standard plan shall:

(1) Site at least three permanent facilities in each county for the collection of electronic waste from covered entities, unless the secretary determines that existing or proposed collection opportunities are not required, but in no case shall the secretary reduce the number of permanent facilities below one.

(2) Site at least one permanent facility in each city or town with a population of 10,000 or greater for the collection of electronic waste from covered entities.

(3) Require electronic waste collection facilities to accept electronic waste at no cost to covered entities.

(4) Ensures that each recycler used in implementing the plan complies with the recycling standards established under section 7559 of this title.

(5) Ensures that during plan implementation a public information and outreach effort takes place to inform consumers about how to recycle their electronic waste at the end of the product's life.

(6) Require electronic waste collection facilities to be staffed, open on an ongoing basis, and open to the public at a frequency needed to meet the needs of the area being served.

(7) Prohibit a collection facility from refusing to accept electronic waste delivered to the facility for recycling from a covered entity.

(c) Plan evaluation. The secretary shall annually review and analyze the standard plan to determine if implementation of the standard plan achieves the statewide collection and recycling goal set forth under section 7555 of this title. The secretary may modify the plan based upon the results of that review.

(d) Plan term. The secretary shall revise and adopt the standard plan every five years.

(e) Public review and consultation. Prior to the approval or modification of the standard plan, the agency shall make the proposed standard plan available for public review and comment for at least 30 days. The agency shall consult with interested persons, including manufacturers, recyclers, collectors, retailers, solid waste districts, and environmental groups.

(f) Applicability. A collector, transporter, or recycler not included in a plan approved under this section or under a plan approved under section 7554 of this title shall not be subject to the requirements of this section or section 7554.

§ 7553. SALE OF COVERED ELECTRONIC DEVICES;
MANUFACTURER REGISTRATION

(a) Sale prohibited. Beginning July 1, 2010, no manufacturer shall sell or offer for sale or deliver to a retailer for subsequent sale a covered electronic device unless:

(1) the manufacturer has filed the registration required by this section;

(2)(A) beginning July 1, 2010, and annually thereafter, the manufacturer has paid the fee required by subsection (g) of this section; and

(B) beginning July 1, 2011, and annually thereafter, if the manufacturer is covered under the standard plan, the manufacturer has paid the fee required by subsection (h) of this section.

(3) the covered electronic device is labeled with the manufacturer's brand or registered trademark and the label or trademark is permanently affixed and readily visible.

(b) Manufacturer registration requirements.

(1) The manufacturer shall file a registration form with the secretary. The secretary shall provide the registration form to a manufacturer. The registration form shall include:

(A) a list of the manufacturer's brands of covered electronic devices offered for sale by the manufacturer in this state;

(B) the name, address, and contact information of a person responsible for ensuring the manufacturer's compliance with this chapter;

(C) beginning July 1, 2011 and annually thereafter, a certification that the manufacturer is seeking coverage under the standard plan set forth under subsection (a) of this section or, under a plan approved under section 7554 of this title, is opting out of the standard plan; and

(D) an estimate of the aggregate total weight of the manufacturer's covered electronic devices sold during the previous program year based on national sales data. A manufacturer shall submit with the report required under this subsection a description of how the estimate was calculated. The data submitted under this subdivision shall be considered a trade secret for the purposes of subdivision 317(c)(9) of Title 1.

(2) A renewal of a registration without changes may be accomplished through notifying the agency of natural resources on a form provided by the agency.

(c) Registration prior to sale. A manufacturer who begins to sell or offer for sale covered electronic devices and has not filed a registration under this section or section 7554 of this title shall submit a registration to the agency of natural resources within ten days of beginning to sell or offer for sale covered electronic devices.

(d) Amendments to registration. A registration shall be amended within ten days after a change to any information included in the registration submitted by the manufacturer under this section.

(e) Effective date of registration. A registration is effective upon receipt by the agency of natural resources of a complete registration form and payment of fees required by this section. Registration under this chapter shall be renewed annually.

(f) Agency review of registration application. The agency of natural resources shall notify the manufacturer of any required information that is omitted from the registration. Upon receipt of a notification from the agency, the manufacturer shall submit a revised registration providing the information noted by the agency.

(g)(1) Registration fee. Each manufacturer of a covered electronic device registered under this section shall pay to the secretary a fee:

(A) For the program year beginning July 1, 2010, for manufacturers who sell in Vermont no more than 100 covered electronic devices, the fee shall be \$1,250.00 and for all other manufacturers, the fee shall be \$5,000.00.

(B) For the program year beginning July 1, 2011 and annually thereafter, the fee shall be determined by multiplying the manufacturer's market share by the cost to the agency of administering the electronic waste collection program under this chapter.

(2) The fees collected under this subsection shall be deposited into the electronic waste collection and recycling account of the waste management assistance fund.

(h) Implementation fee.

(1) For the program year of July 1, 2011, through June 30, 2012, each manufacturer that seeks coverage under the standard plan shall pay to the secretary an implementation fee that shall be assessed on a quarterly basis and that shall be determined by multiplying the manufacturer's market share by the prior quarter's cost of implementing the electronic waste collection and recycling program adopted under the standard plan. For purposes of this section, the electronic waste and recycling program includes collection, transportation, recycling, and the reasonable cost of contract administration.

(2) Beginning with the program year starting July 1, 2012, a proposed methodology for calculating the implementation fee for manufacturers seeking coverage under the standard plan shall be included in the executive branch fee report and approved by the general assembly according to the requirements of subchapter 6 of chapter 7 of Title 32.

(3) The fee collected under this subsection shall be deposited into the electronic waste collection and recycling account of the waste management assistance fund.

(4) For purposes of reimbursing the solid waste management account in full for all funds transferred to the electronic waste collection and recycling assistance account for implementation of the electronic waste collection and recycling program, the secretary, under subdivision (1) or (2) of this

subsection, may assess against a manufacturer registered and operating under the standard plan set forth in section 7552 of this title a charge in addition to the manufacturer's prorated share of the costs of implementing the electronic waste collection and recycling program.

(5) At the end of each program year, the secretary shall review the total costs of collection and recycling for the program year and shall reapportion the implementation fee assessed under this subsection to accurately reflect the manufacturer's actual market share of covered electronic devices sold in the state during the program year.

(i) Exemption. A manufacturer who sells less than 20 covered electronic devices in Vermont in a program year is exempt from the requirements of this section.

§ 7554. MANUFACTURER OPT-OUT; INDIVIDUAL PLAN

(a) Opt-out of standard plan. A manufacturer or group of manufacturers may elect not to seek coverage under the standard plan established under section 7552 of this title, provided that the manufacturer or group of manufacturers complies with the requirements of subdivisions 7553(a)(1)–(3) and submits an individual plan to the secretary for approval that:

(1) Provides for each county the number of collection methods identified in the standard plan adopted under section 7552 of this title.

(2) Describes the collection, transportation, and recycling systems and service providers used, including a description of how the authority or authorized party will:

(A) Seek to use businesses within the state, including retailers, charities, processors, and collection and transportation services, to fulfill its program goal under this section;

(B) Fairly compensate collectors for providing collection services;
and

(C) Fairly compensate recyclers for providing recycling services.

(3) Describes how the plan will provide service to covered entities.

(4) Describes the processes and methods used to recycle electronic waste, including a description of the processing that will be used and the facility location.

(5) Documents the audits of each recycler used in the plan and compliance with recycling standards established under section 7559 of this title.

(6) Describes the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share.

(7) Includes a time line describing start-up, implementation, and progress toward milestones with anticipated results.

(8) Includes a public information campaign to inform consumers about how to recycle their electronic waste at the end of the product's life.

(b) Manufacturer program goal. An individual plan submitted under this section shall be implemented to ensure satisfaction of the manufacturer's electronic waste program goal. The electronic waste recycling program goal for a manufacturer that submits a plan under this section shall be the product of the relevant statewide recycling goal set forth in subsection 7555(a) of this title multiplied by the manufacturer's market share of covered electronic devices. A manufacturer that submits a plan under this section may only count electronic waste received from covered entities toward the program goal set forth in this section.

(c) Collection from covered entities. A manufacturer that submits a plan under this section or a collector operating on behalf of a manufacturer that submits a plan under this section shall not charge a fee to covered entities for the collection, transportation, or recycling of electronic waste.

(d) Public review and consultation. Prior to approval of a plan under this section, the agency shall make the manufacturer's proposed plan available for public review and comment for at least 30 days.

(e) Collection facilities. If a manufacturer that submits a plan under this section is required to implement a collection facility, the collection facility shall be staffed, open on an ongoing basis, and open to the public at a frequency approved by the secretary in order to meet the needs of the area being served. A collection facility implemented under this section shall be prohibited from refusing or rejecting acceptance of electronic waste delivered to the facility for recycling.

(f) Annual report. Beginning August 1, 2012, a manufacturer that submits a plan under this section shall report by August 1, and annually thereafter, to the secretary the following:

(1) the type of electronic waste collected;

(2) the aggregate total weight of electronic waste the manufacturer recycled by type during the preceding program year;

(3) a list of recyclers utilized by the manufacturer;

(4) a description of the processes and methods used to recycle the electronic waste; and

(5) a summary of the educational and outreach activities undertaken by the manufacturer.

(g)(1) Parity surcharge. A manufacturer that submits a plan under this section shall be assessed a surcharge if the lesser of the following occurs:

(A) the manufacturer accepts less than the program goal set forth in subsection (b) of this section; or

(B) the manufacturer accepts less than its market share portion of the total of electronic waste collected in the state.

(2) The surcharge shall be calculated by multiplying the average per pound of cost to the secretary for the current program year to implement the standard plan plus 20 percent by the number of additional pounds of electronic waste that should have been accepted by the manufacturer. The surcharges collected under this section shall be deposited into the electronic waste collection and recycling account of the waste management assistance fund and used to offset the costs of program implementation.

(h) Effective date of plan approval. A plan submitted under this section shall not be approved until the secretary determines that the plan will provide a functionally equivalent level of electronic waste collection and recycling as the standard plan and that all the requirements of this section have been met.

(i) Amendments to plan. An amendment to an individual plan approved under this section shall not take effect until approved by the secretary.

(j) Opt-in to standard plan. At the completion of any program year, a manufacturer approved under this section may seek coverage under the standard plan adopted under section 7552 of this title.

§ 7555. STATEWIDE RECYCLING GOAL

(a) Statewide recycling goal.

(1) For the program year of July 1, 2011, to June 30, 2012, the statewide recycling goal for electronic waste shall be the product of the U.S. Census Bureau's 2010 population estimate for the state multiplied by 5.5 pounds.

(2) For the program year of July 1, 2012, to June 30, 2013, the statewide recycling goal for electronic waste shall be the product of the U.S. Census Bureau's 2010 population estimate for the state multiplied by 6.0 pounds.

(3) For the program year of July 1, 2013, to June 30, 2014, and annually thereafter, the statewide recycling goal for all electronic waste shall be the product of the base weight multiplied by the goal attainment percentage.

(b) Base weight. For purposes of this section, "base weight" means the average weight of all electronic waste reported as collected under this chapter during the previous two program years.

(c) Goal attainment percentage. For purposes of this section, "goal attainment percentage" means, for each type of product:

(1) 90 percent if the base weight is less than 90 percent of the statewide recycling goal for the previous calendar year;

(2) 95 percent if the base weight is 90 percent or greater, but not more than 95 percent of the statewide recycling goal for the previous calendar year;

(3) 100 percent if the base weight is 95 percent or greater, but not more than 105 percent of the statewide recycling goal for the previous calendar year;

(4) 105 percent if the base weight is 105 percent or greater, but not more than 110 percent of the statewide recycling goal for the previous calendar year;
or

(5) 110 percent if the base weight is 110 percent or greater of the statewide recycling goal.

§ 7556. RETAILER OBLIGATIONS

(a) Sale prohibited. Beginning July 1, 2010, no retailer shall sell or offer for sale a covered electronic device unless the covered electronic device is labeled by the manufacturer as required by subdivision 7553(a)(3) of this title, and the retailer has reviewed the website required in subdivision 7559(6) of this title to determine that the labeled manufacturers of all new covered electronic devices that the retailer is offering for sale are registered with the agency of natural resources.

(b) Expiration or revocation of manufacturer registration. A retailer shall not be responsible for an unlawful sale under this subdivision if the manufacturer was not registered or the manufacturer's registration expired or was revoked if the retailer took possession of the covered electronic device prior to July 1, 2010 or prior to the expiration or revocation of the manufacturer's registration, and the unlawful sale occurred within six months after the expiration or revocation.

(c) Customer information. Beginning July 1, 2011, a retailer who sells new covered electronic devices shall provide information to customers describing where and how they may recycle electronic waste and advising them of

opportunities and locations for the convenient collection of electronic waste for the purpose of recycling. This requirement may be met by the posting of signs provided under the standard plan or a plan approved under section 7554 of this title that includes a warning that electronic waste shall not be disposed of in a solid waste facility and that provides a toll-free number or website address regarding proper disposal of covered electronic devices.

§ 7557. RECYCLER PROGRAM RESPONSIBILITY

(a)(1) Recycler registration. Beginning July 1, 2011, no person may recycle electronic waste at a facility located within the state unless that person has submitted a registration with the agency of natural resources on a form prescribed by the agency. A registration is effective upon receipt by the agency and is valid for a period not to exceed five years. An electronics recycling facility registered under this section is not required to obtain a solid waste certification pursuant to chapter 159 of this title. Registration information shall include:

(A) the name, address, telephone number, and location of all recycling facilities under the direct control of the recycler that may receive electronic waste;

(B) evidence that the financial assurance requirements of section 6611 of this title have been satisfied.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the recycler under this section.

(b) Recycler's reporting requirements. Beginning August 1, 2012, a recycler of electronic waste shall report by August 1, and annually thereafter, to the agency of natural resources on a form provided by the agency: the type of electronic waste collected; the total weight of electronic waste recycled during the preceding program year; and whether electronic waste was collected under the standard or an approved individual plan. In the annual report, the recycler shall certify that the recycler has complied with the electronic management guidelines developed under subdivision 7559(7) of this title.

§ 7558. COLLECTOR AND TRANSPORTER PROGRAM RESPONSIBILITY

(a)(1) Collector and transporter registration. Beginning July 1, 2011, no person may operate as a collector or transporter of electronic waste unless that person has submitted a registration with the agency of natural resources on a form prescribed by the agency. A registration is effective upon receipt by the agency and is valid for a period not to exceed five years. An electronics

collector or transporter registered under this section shall not be required to obtain a solid waste certification or a solid waste hauler permit pursuant to chapter 159 of this title.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the collector under this section.

(3) Beginning August 1, 2012, a collector of electronic waste shall report by August 1, and annually thereafter, to the agency of natural resources on a form provided by the agency: the type of electronic waste collected; the total weight of electronic waste recycled during the preceding program year; and whether electronic waste was collected under the standard or an approved individual plan.

(b) Transporter reporting requirements. Beginning August 1, 2012, a transporter of electronic waste not destined for recycling in Vermont shall report annually by August 1 to the agency of natural resources the total pounds of electronic waste collected and whether electronic waste was collected under the standard or an approved individual plan.

§ 7559. AGENCY OF NATURAL RESOURCES RESPONSIBILITIES

The agency of natural resources shall:

(1) Adopt and administer the standard plan required under section 7552 of this title.

(2) Establish procedures for:

(A) the registration and certifications required under this chapter; and

(B) making the registrations and certifications required under this chapter easily available to manufacturers, retailers, and members of the public.

(3) Collect the data submitted under this chapter.

(4) Annually review data submitted under this chapter to determine whether any of the variables in the statewide recycling goal should be changed, the agency shall submit recommended changes to the senate and house committees on natural resources and energy.

(5) Beginning February 15, 2012, annually report to the senate and house committees on natural resources and energy, the house committee on ways and means, the senate committee on finance, and the senate and house committees on appropriations regarding the implementation of this chapter. Prior to submitting this report, the secretary shall share it with interested persons. For each program year, the report shall provide the total weight of electronic waste recycled. The report shall also summarize the various

collection programs used to collect electronic waste; information regarding electronic waste that is being collected by persons outside a plan approved under this chapter; and information about electronic waste, if any, being disposed of in landfills in this state. The report shall include an accounting of the cost of the program, the governor's estimated budget for the program for the next relevant fiscal year, and a summary of the funding sources for the program. The agency may include in its report other information regarding the implementation of this chapter and may recommend additional incentives to increase the rate of recycling.

(6) Maintain a website that includes the names of manufacturers with current, valid registrations; the manufacturers' brands listed in registrations filed with the agency. The agency shall update the website information within 10 days of receipt of a complete registration.

(7) In consultation with interested parties, establish guidelines for the environmentally sound management of consumer electronics, including specific requirements for collectors, transporters, and recyclers.

(8) Identify approved transporters, collectors, and recyclers.

§ 7560. ADMINISTRATION OF ELECTRONIC WASTE RECYCLING PROGRAM

(a) The secretary of natural resources may contract for implementation and administration of the standard plan required under section 7552 of this title and, in so doing, shall comply with the agency of administration's current contracting procedures.

(b) In contracting for implementation and administration of the standard plan, the secretary shall review the costs incurred by similar electronic waste collection and recycling programs in other states. The secretary in his or her discretion may reopen the standard plan if bids received in response to a request for proposal exceed the average cost of collection and recycling incurred by similar electronic waste collection and recycling programs in other states.

§ 7561. OTHER RECYCLING PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to recycle their electronic waste to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their recycling obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program recycling electronic waste in addition to those provided by manufacturers or prohibits or restricts any persons from

receiving, collecting, transporting, or recycling electronic waste, provided that those persons are registered as required under this chapter.

§ 7562. MULTISTATE IMPLEMENTATION

The agency of natural resources or a contracted entity under section 7560 of this title is authorized to participate in the establishment of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

§ 7563. LIMITATIONS

If a federal law or combination of federal laws takes effect that is applicable to all covered electronic devices sold in the United States and establishes a program for the collection and recycling or reuse of covered electronic devices that is applicable to all covered electronic devices, the agency shall evaluate whether the federal law provides a solution that is equal to or better than the program established under this chapter. The agency shall report its findings to the general assembly.

§ 7564. RULEMAKING

The secretary of natural resources may adopt rules to implement the requirements of this chapter.

Sec. 3. 10 V.S.A. § 6618 is amended to read:

§ 6618. WASTE MANAGEMENT ASSISTANCE FUND

(a) There is hereby created in the state treasury a fund to be known as the waste management assistance fund, to be expended by the secretary of the agency of natural resources. The fund shall have ~~two~~ three accounts: one for solid waste management assistance ~~and~~, one for hazardous waste management assistance, and one for electronic waste collection and recycling assistance. The hazardous waste management assistance account shall consist of a percentage of the tax on hazardous waste under the provisions of 32 V.S.A. chapter 237, as established by the secretary, the toxics use reduction fees under subsection 6628(j) of this title, and appropriations of the general assembly. In no event shall the amount of the hazardous waste tax which is deposited to the hazardous waste management assistance account exceed 40 percent of the annual tax receipts. The solid waste management assistance account shall consist of the franchise tax on waste facilities assessed under the provisions of subchapter 13 of chapter 151 of Title 32, and appropriations of the general assembly. The electronic waste collection and recycling account shall consist of the program and implementation fees required under section 7553 of this title. All balances in the fund accounts at the end of any fiscal year shall be carried forward and remain a part of the fund accounts, except as provided in

subsection (e) of this section. Interest earned by the fund shall be deposited into the appropriate fund account. Disbursements from the fund accounts shall be made by the state treasurer on warrants drawn by the commissioner of finance and management.

* * *

(d) The secretary shall annually allocate from the fund accounts the amounts to be disbursed for each of the functions described in subsections (b) ~~and~~, (c), and (f) of this section. The secretary, in conformance with the priorities established in this chapter, shall establish a system of priorities within each function when the allocation is insufficient to provide funding for all eligible applicants.

* * *

Sec. 4. 10 V.S.A. § 6621a(a) is amended to read:

(a) In accordance with the following schedule, no person shall knowingly dispose of the following solid waste in landfills:

* * *

(8) Banned electronic devices. After January 1, 2011, computers; peripherals; computer monitors; cathode ray tubes; televisions; printers; personal electronics such as personal digital assistants and personal music players; electronic game consoles; printers; fax machines; wireless telephones; telephones; answering machines; videocassette recorders; digital versatile disc players; digital converter boxes; stereo equipment; and power supply cords (as used to charge electronic devices).

Sec. 5. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

* * *

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management; ~~and~~

(19) 24 V.S.A. chapter 61, subchapter 10, relating to salvage yards; and

(20) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste.

Sec. 6. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this

title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(P) chapter 166 (collection and recycling of electronic waste).

Sec. 6a. SUNSET

10 V.S.A. § 7559(5) (ANR annual report to general assembly regarding electronic waste collection and recycling program) shall be repealed February 16, 2014.

Sec. 6b. ELECTRONIC WASTE COLLECTION AND RECYCLING PROGRAM FUNDING

(a) Beginning in fiscal year 2012, the governor's proposed budget for the agency of natural resources shall include a line item, including the source of the funds, for the electronic waste collection and recycling activities required under chapter 166 of Title 10.

(b) The secretary of natural resources may transfer funds within the waste management assistance fund from the solid waste management assistance account to the electronic waste collection and recycling assistance account to pay the initial costs incurred by the agency of natural resources in the first quarter of the program year beginning July 1, 2011, in implementing the electronic waste collection and recycling requirements of chapter 166 of Title 10. In no case shall the unencumbered balance of the solid waste management assistance account following a transfer under this subsection be less than \$300,000.00.

(c) On or before January 15, 2012, the secretary of natural resources shall reimburse the solid waste management account in full for all funds transferred from the solid waste management account to the environmental contingency fund under 10 V.S.A. § 6618(f) for implementation of the electronic waste collection and recycling program under chapter 166 of Title 10.

(d) On or before February 15, 2011, the secretary of natural resources shall provide the house and senate committees on natural resources, the house committee on ways and means, the senate committee on finance, and the senate and house committees on appropriations with a summary of the status of the secretary's development of the electronic waste collection and recycling standard plan under 10 V.S.A. § 7552 and of the status of any request for proposal to implement the standard plan.

Sec. 6c. ANR DISBURSEMENTS; APPROPRIATIONS

(a) In fiscal year 2011, the secretary of natural resources may authorize disbursements from the electronic waste collection and recycling account within the waste management assistance fund for the purpose of paying the costs of administering and implementing the electronic waste collection program set forth under chapter 166 of Title 10.

(b) In addition to any other funds appropriated to the agency of natural resources in fiscal year 2011, there is appropriated from the general fund to the agency \$50,000.00 in fiscal year 2011 for the purpose of administering and implementing the electronic waste collection and recycling program under chapter 166 of Title 10.

Sec. 7. EFFECTIVE DATE

This act shall take effect upon passage.

And that after passage the title of the bill be amended to read:

“An act relating to the recycling and disposal of electronic waste.”

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

First: In Sec. 2, 10 V.S.A. § 7551(3), by striking out the following: “covered electronic devices” where it appears and inserting in lieu thereof the following: electronic waste

Second: In Sec. 2, 10 V.S.A. § 7551(10), in the first sentence, by inserting a semicolon between “computer peripheral” and “device containing” and in the second sentence by inserting the following: library, between “industrial,” and “research and development”

Third: In Sec. 2, 10 V.S.A. § 7551(11), by striking out subdivision (11)(D) in its entirety and inserting in lieu thereof the following:

(D) Imports into the United States for sale in the state a covered electronic device manufactured by a person without a presence in the United States;

Fourth: In Sec. 2, 10 V.S.A. § 7553(h)(5) by striking out the following: “to accurately reflect the manufacturer’s actual market share” where it appears and inserting in lieu thereof the following: to accurately reflect the actual cost of the program and the manufacturer’s market share

Fifth: In Sec. 6c(a), by striking out the following: “In fiscal year 2011,” where it appears and inserting in lieu thereof the following: In fiscal years 2011 and 2012,

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment?, on motion of Senator Lyons consideration of the bill was postponed until the next legislative day.

Bill Amended; Third Reading Ordered

S. 283.

Senator Scott, for the Committee on Transportation, to which was referred Senate bill entitled:

An act relating to amending miscellaneous motor vehicle laws, eliminating the motorcycle rider training program advisory committee, and repealing the interstate compact for motor vehicle safety equipment.

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

Sec. 1. 23 V.S.A. § 4 is amended to read:

§ 4. DEFINITIONS

Except as may be otherwise provided herein, and unless the context otherwise requires in statutes relating to motor vehicles and enforcement of the law regulating vehicles, as provided in this title and part 5 of Title 20, the following definitions shall apply:

* * *

(45) “Moped” means a motor driven cycle equipped with two or three wheels, with or without foot pedals to permit muscular propulsion, a power source providing up to a maximum of two brake horsepower and having a maximum piston or rotor displacement of 50 cubic centimeters if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed 30 miles per hour on a level road surface, and which is equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. As motor vehicles, mopeds shall be subject to the purchase and use tax imposed under chapter 219 of Title 32 rather than to a general sales tax. An electric personal assistive mobility device is not a moped.

* * *

Sec. 2. 23 V.S.A. § 114(a)(21) is amended to read:

(21) Records not otherwise specified 4.00 6.00 per page

Sec. 3. 23 V.S.A. §§ 453 and 459 are amended to read:

§ 453. FEES AND NUMBER PLATES

* * *

(g) The commissioner of motor vehicles shall not issue a dealer's certificate of registration to a new or used car dealer, unless the dealer has provided the commissioner with a surety bond, letter of credit, or certificate of deposit issued by an entity authorized to transact business in the same state. The amount of such surety bond, letter of credit, or certificate of deposit shall be between ~~\$5,000.00~~ \$20,000.00 and ~~\$15,000.00,~~ \$35,000.00 based on the number of new or used units sold in the previous year; such schedule is to be determined by the commissioner of motor vehicles. In the case of a certificate of deposit, it shall be issued in the name of the dealer and assigned to the commissioner or his or her designee. The bond, letter of credit, or certificate of deposit shall serve as indemnification for any monetary loss suffered by the state or by a purchaser of a motor vehicle by reason of the dealer's failure to remit to the commissioner any fees collected by the dealer under the provisions of chapters 7 and 21 of this title or by a dealer's failure to remit to the commissioner any tax collected by the dealer under chapter 219 of Title 32. This state or the motor vehicle owner who suffers such loss or damage shall have the right to claim against the surety upon the bond or against the letter of credit or certificate of deposit. The bond, letter of credit, or certificate of deposit shall remain in effect for the pending registration year and one year thereafter. The liability of any such surety or claim against the letter of credit or certificate of deposit shall be limited to the amount of the fees or tax collected by the dealer under chapters 7 and 21 of this title or chapter 219 of Title 32 and not remitted to the commissioner.

§ 459. NOTICE TO COMMISSIONER

(a) Upon issuing a number plate with temporary validation stickers, temporary number plate, or decal to a purchaser for attachment to a motor vehicle, a dealer shall, within ~~three business~~ 15 calendar days, forward to the commissioner the application and fee, deposited with him or her by the purchaser, together with notice of such issue and such other information as the commissioner may require.

(b) If a number plate with temporary validation stickers, temporary registration plate, or decal is not issued by a dealer in connection with the sale or exchange of a motor vehicle, the dealer may accept, from the purchaser, a properly executed registration, tax and title application, and the required fees for transmission to the commissioner. The dealer shall, within ~~three business~~

15 calendar days, forward to the commissioner the application and fee together with such other information as the commissioner may require.

Sec. 4. 23 V.S.A. § 1129(a) is amended to read:

(a) The operator of a motor vehicle involved in an accident whereby a person is injured or whereby there is total damage to all property to the extent of ~~\$1,000.00~~ \$3,000.00 or more shall make a written report concerning the accident to the commissioner of motor vehicles on forms furnished by the commissioner. The written report shall be mailed to the commissioner within 72 hours after the accident. The commissioner may require further facts concerning the accident to be provided upon forms furnished by him or her.

Sec. 5. 23 V.S.A. § 1222(c) is amended to read:

(c) Notwithstanding the provisions of subsection (a) of this section, an exhibition vehicle of model year 1940 or before, registered as prescribed in section 373 of this title or a trailer registered as prescribed in subdivision 371(a)(1)(A) of this title shall be exempt from inspection; provided, however, the vehicle must be equipped as originally manufactured, must be in good mechanical condition, and must meet the applicable standards of the inspection manual.

Sec. 6. 23 V.S.A. § 2017(b) is amended to read:

(b) The commissioner shall maintain at his or her central office a record of all certificates of title issued by him or her:

~~(1) Under for vehicles 15 years old and newer under~~ a distinctive title number assigned to the vehicle;

~~(2) Under under~~ the identification number of the vehicle;

~~(3) Alphabetically~~ alphabetically, under the name of the owner; and, in the discretion of the commissioner, by any other method he or she determines. The original records may be maintained on microfilm or electronic imaging. ~~and, in the discretion of the commissioner, by any other method he or she determines. The original records may be maintained on microfilm or electronic imaging.~~

Sec. 7. REPEAL

23 V.S.A. § 735 (motorcycle rider training program advisory committee) and chapter 20 of Title 23 (interstate compact for motor vehicle safety equipment) are repealed.

And that when so amended the bill ought to pass.

Senator Hartwell, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

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

Bill Passed

Senate bill entitled:

S. 207. An act relating to handling of milk samples.

Was taken up.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 28, Nays 0.

Senator Flanagan 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, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

Those Senators absent or not voting were: Illuzzi, Shumlin (presiding).

Bill Passed

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

S. 259. An act relating to the tuition to be paid by a designating school district.

Bill Amended; Bill Passed

S. 292.

Senate bill entitled:

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

Was taken up.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the bill by in Sec. 5, in subsection (c) after the words "nonviolent felony probationers" by adding the following: , except those who are on probation pursuant to 23 V.S.A. § 1210(d), and in subsection (d) after the

words “nonviolent felonies” by adding the following: , except those who are serving a sentence pursuant to 23 V.S.A. § 1210(d).

Which was agreed to.

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

Bill Passed in Concurrence

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

H. 607. An act relating to codifying and amending the charter of the Chittenden County Transportation Authority.

Third Readings Ordered

H. 761.

Senator Kitchel, for the Committee on Transportation, to which was referred House bill entitled:

An act relating to authorization of High-Speed Intercity Passenger Rail Program grants.

Reported that the bill ought to pass in concurrence.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending 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.

S. 64.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to growth center designations and appeals of such designations.

Reported recommending that the bill be amended by striking out Secs. 2 through 4 in their entirety and inserting in lieu thereof new Secs. 2, 3 and 4 to read as follows:

Sec. 2. 24 V.S.A. § 2792 is amended to read:

§ 2792. VERMONT DOWNTOWN DEVELOPMENT BOARD; VERMONT GROWTH CENTER BOARD

(a) A “Vermont downtown development board,” also referred to as the “state board,” is created to administer the provisions of this chapter, except for those responsibilities assigned under section 2793c of this title to the Vermont

growth center board. The state board shall be composed of the following members, or their designees:

* * *

(c) The state board shall elect its chair from among its membership. A “Vermont growth center board” also referred to as the “growth center board” is created to perform those tasks assigned by section 2793c of this title. The growth center board shall be composed of the following members:

(1) The secretary of commerce and community development or, in the secretary’s absence, the deputy secretary of commerce and community development, who shall serve as chair.

(2) The secretary of transportation or, in the secretary’s absence, the deputy secretary of transportation.

(3) The secretary of natural resources or, in the secretary’s absence, the deputy secretary of natural resources.

(4) A member of the Vermont planners association (VPA) designated by the association.

(5) A municipal officer designated by the Vermont League of Cities and Towns (VLCT) and an alternate municipal officer designated by VLCT to enable all applications to be considered by an officer from a municipality other than the applicant municipality. The alternate municipal officer may vote only when the designated municipal officer does not vote.

(6) A representative of a regional planning commission designated by the Vermont association of regional planning and development agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one to which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote.

(7) Three members of the public, appointed by the governor, each of whom has professional expertise in the fields of community and land use planning, smart growth, downtown revitalization, community development, architecture, urban design, or historic preservation. Prior to making an appointment under this subdivision, the governor shall solicit recommended appointees from groups with expertise in these fields, including the land use institute at the Vermont law school, Smart Growth Vermont, the Vermont natural resources council, the Vermont chapter of the American Society of Landscape Architects, and the Vermont chapter of the American Institute of Architects.

(d) The department of economic, housing, and community affairs development shall provide staff and administrative support to the state board and to the growth center board.

(e) On or before January 1, 1999, the state board shall report to the general assembly on the progress of the downtown development program.

~~(f) In situations in which the state board is considering applications for designation as a growth center, in addition to the permanent members of the state board, membership shall include as a full voting member a member of the Vermont planners association (VPA) designated by the association; the chair of the natural resources board or a representative of the land use panel of the natural resources board designated by the chair; and a representative of a regional planning commission designated by the Vermont association of regional planning and development agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one to which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote. The state board shall elect its chair from among its membership.~~

Sec. 3. 24 V.S.A. § 2793c is amended to read:

§ 2793c. DESIGNATION OF GROWTH CENTERS

* * *

(b) Growth center designation application assistance.

(1) ~~By October 1, 2006, the~~ The chair of the land use panel of the natural resources board and the commissioner of economic, housing, and community affairs development jointly shall ~~constitute a planning coordination group which shall~~ develop and maintain a coordinated process to:

(A) ensure consistency between regions and municipalities regarding growth centers designation and related planning;

(B) provide municipalities with a preapplication review process ~~within the planning coordination group~~ early in the local planning process;

(C) coordinate state agency review on matters of agency interest; and

(D) provide the state growth center board with ongoing, coordinated staff support and expertise in land use, community planning, and natural resources protection.

(2) This ~~program~~ process shall include the following:

(A) The preparation of a “municipal growth centers planning manual and implementation checklist” to assist municipalities and regional planning

commissions to plan for growth center designation. The implementation manual shall identify state resources available to assist municipalities and shall include a checklist indicating the issues that should be addressed by the municipality in planning for growth center designation. The manual shall address other relevant topics in appropriate detail, such as: methodologies for conducting growth projections and build-out analyses; defining appropriate boundaries that are not unduly expansive; enacting plan policies and implementation bylaws that accommodate reasonable densities, compact settlement patterns, and an appropriate mix of uses within growth centers; planning for infrastructure, transportation facilities, and open space; avoiding or mitigating impacts to important natural resources and historic resources; and strategies for maintaining the rural character and working landscape outside growth center boundaries.

(B) A preapplication review process ~~that allows under which~~ municipalities ~~to~~ shall submit a preliminary application to the ~~planning coordination group~~ growth center board, consisting of a draft growth center map and a brief explanation of planning and implementation policies that the municipality anticipates ~~enacting~~ it will enact prior to submission of an application under subsection (d) of this section in order to guide development inside the growth center and maintain the rural character of the surrounding area, to the extent that it exists. ~~Department~~ This preapplication review process shall be required prior to filing of an application under subsection (d) of this section. Supported by department and land use panel staff, the growth center board shall solicit comments from state agencies regarding areas of respective agency interest; evaluate the preliminary application for conformance with the requirements of this section; identify potential issues related to the growth center boundary and implementation tools; and provide recommendations for addressing those issues through adjustment to the growth centers boundary, revisions to planned implementation tools, or consideration of alternative implementation tools. Preliminary review shall be available to municipalities while they are engaged in the municipal planning process so that recommendations may be considered prior to the adoption of the municipal plan and associated implementation measures.

(C) Ongoing assistance to the ~~state~~ growth center board to review applications for growth center designation, including coordinating review by state agencies on matters of agency interest and evaluating applications and associated plan policies and implementation measures for conformance with the definition under subdivision 2791(12) of this title and any designation requirements established under subsection (e) of this section.

* * *

(d) Application and designation requirements. Any application for designation as a growth center shall be to the ~~state~~ growth center board and shall include a specific demonstration that the proposed growth center meets each provision of subdivisions (e)(1)(A) through (J) of this section. In addition to those provisions, each of the following shall apply:

~~(1) a demonstration that the growth center proposal meets the definition of a growth center established in subdivision 2791(12) of this title; In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the application shall contain an explanation of the unique circumstances that prevent the growth center from possessing that characteristic and why, in the absence of that characteristic, the proposed growth center will comply with the purposes of this chapter and all other requirements of this section.~~

~~(2) Any demonstration that an application complies with subdivision (e)(1)(C) of this section shall include an analysis, with respect to each existing designated downtown or village or new town center located within the applicant municipality, of current vacancy rates, opportunities to develop or redevelop existing undeveloped or underdeveloped properties and whether such opportunities are economically viable, and opportunities to revise zoning or other applicable bylaws in a manner that would permit future development that is at a higher density than existing development.~~

~~(2) a~~ ~~(3)~~ A map and a conceptual plan for the growth center;

~~(3) identification of important natural resources and historic resources within the proposed growth center, the anticipated impacts on those resources, and any proposed mitigation;~~

~~(4) when the secretary of agriculture, food and markets has developed guidelines in compliance with 6 V.S.A. § 8, the applicant shall demonstrate that the approved municipal plan and the regional plan both have been updated during any five year plan readoption that has taken place since the date the secretary of agriculture, food and markets developed those guidelines, have been used to identify areas proposed for agriculture, and have been designed so as to avoid the conversion of primary agricultural soils, wherever possible;~~

~~(5) a demonstration:~~

~~(A) that the applicant has a regionally confirmed planning process and an approved municipal plan, pursuant to section 4350 of this title;~~

~~(B) that the approved plan contains provisions that are appropriate to implement the designated growth center proposal;~~

~~(C) that the applicant has adopted bylaws in conformance with the municipal plan that implement the provisions in the plan that pertain to the designated growth center;~~

~~(D) that the approved plan and the implementing bylaws further the goal of retaining a more rural character in the area surrounding the growth center, to the extent that a more rural character exists, and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center;~~

~~(6) a capital budget and program adopted in accordance with section 4426 of this title, together with a demonstration that existing and planned infrastructure is adequate to implement the growth center;~~

~~(7) a~~ (4) A build-out analysis and needs study that demonstrates that the growth center:

~~(A) is of an appropriate size sufficient to accommodate a majority of the projected population and development over a 20 year planning period in a manner that is consistent with the definition under subdivision 2791(12) of this title; and~~

~~(B) does not encompass an excessive area of land that would involve the unnecessary extension of infrastructure to service low density development, or result in a scattered or low density pattern of development at the conclusion of the 20 year planning period;~~

~~(8) a demonstration:~~

~~(A) that the growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses that is consistent with the anticipated demand for those uses within the municipality and region;~~

~~(B) that the proposed growth center growth cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality meets the provisions of subdivision (e)(1)(J) of this section.~~

(e) Designation decision.

(1) Within 90 days of the receipt of a completed application, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard, the state growth center board formally

shall designate a growth center if the state growth center board finds, in a written decision, that the growth center proposal meets each of the following:

(A) that the The growth center proposal meets the definition of a growth center established in subdivision 2791(12) of this title; including planned land uses, densities, settlement patterns, infrastructure, and transportation within the center and transportation relationships to areas outside the center. In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the growth center board shall not approve the growth center proposal unless it finds that the absence of that characteristic will not prevent the proposed growth center from complying with the purposes of this chapter and all other requirements of this section. This subdivision (A) does not confer authority to approve a growth center that lacks more than one characteristic listed in subdivision 2791(12)(B) of this title.

(B) The growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses that are consistent with the anticipated demand for those uses within the municipality and region.

(C) The growth that is proposed to occur in the growth center cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality.

(D) In the case of a growth center that is associated with a designated new town center, the applicable municipal bylaws provide that areas within the growth center that will be zoned predominantly for retail and office development will be located within the new town center.

(E) In the case of a growth center that is associated with a designated downtown or village center, the applicable municipal bylaws provide that, with respect to those areas within the growth center that will be located outside the designated downtown or village center and will be zoned predominantly for retail and office development:

(i) The total acreage of all such areas will be less than or equal to the total acreage of the designated downtown or village center;

(ii) Such areas will serve as a logical expansion of the designated downtown or village center through such means as sharing of infrastructure and facilities and shared pedestrian accessibility; and

(iii) Such areas will be subject to enacted land use and development standards that will establish a development pattern that is compact, oriented to pedestrians, and consistent with smart growth principles.

~~(B) that the~~ (F) The applicant has identified important natural resources and historic resources within the proposed growth center and the anticipated impacts on those resources, and has proposed mitigation;

~~(C) that the~~ (G) The approved municipal plan and the regional plan both have been updated during any five-year plan readoption that has taken place since the date the secretary of agriculture, food and markets has developed guidelines in compliance with 6 V.S.A. § 8, have been used to identify areas proposed for agriculture, and have been designed so as to avoid the conversion of primary agricultural soils, wherever possible;

~~(D)(H)(i) that the~~ The applicant has a regionally confirmed planning process and an approved municipal plan, pursuant to section 4350 of this title;

(ii) ~~that the~~ The approved plan contains provisions that are appropriate to implement the designated growth center proposal;

(iii) ~~that the~~ The applicant has adopted bylaws in conformance with the municipal plan that implement the provisions in the plan that pertain to the designated growth center, including:

(I) bylaw provisions that ensure that land development and use in the growth center will comply with smart growth principles; and

(II) with respect to residential development in the growth center, bylaw provisions that allow a residential development density that is:

(aa) at least four dwelling units per acre; and

(bb) a higher development density if necessary to conform with the historic densities and settlement patterns in residential neighborhoods located in close proximity to a designated downtown or village center which the growth center is within or to which the growth center is adjacent under subdivision 2791(12)(A)(i) or (ii) of this title; and

(iv) ~~that the~~ The approved plan and the implementing bylaws further the goal of retaining a more rural character in the areas surrounding the growth center, to the extent that a more rural character exists, and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center;

~~(E) that the~~ (I) The applicant has adopted a capital budget and program in accordance with section 4426 of this title, and that existing and planned infrastructure is adequate to implement the growth center;

~~(F) that the~~ (J) The growth center;

(i) is of an appropriate size sufficient to accommodate a majority of the projected population and development over a 20-year planning period in a manner that is consistent with the definition under subdivision 2791(12) of this title, and that the growth center;

(ii) does not encompass an excessive area of land that would involve the unnecessary extension of infrastructure to service low-density development or result in a scattered or low-density pattern of development at the conclusion of the 20-year planning period; and

(iii) using a 20-year planning period commencing with the year of the application, is sized to accommodate each of the following:

(I) an amount of residential development that is no more than 150 percent of the projected residential growth in the municipality; and

(II) an amount of commercial or industrial development, or both, that does not exceed 100 percent of the projected commercial and industrial growth in the municipality.

~~(G)(i) that the growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses consistent with the anticipated demand for those uses within the municipality and region;~~

~~(ii) that the proposed growth center growth cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality.~~

(2) The growth center board, as a condition of growth center designation, may require certain regulatory changes prior to the effective date of designation. In addition, the growth center designation may be modified, suspended, or revoked if the applicant fails to achieve the required regulatory changes within a specified period of time. As an option, municipalities applying for growth center designation may make certain regulatory changes effective and contingent upon formal designation.

(3) Within 21 days of a growth center designation under subdivision (1) of this subsection, a person or entity that submitted written or oral comments to the growth center board during its consideration of the application for the designated growth center may request that the growth center board reconsider the designation. Any such request for reconsideration shall identify each specific finding of the growth center board for which reconsideration is

requested and state the reasons why each such finding should be reconsidered. The filing of such a request shall stay the effectiveness of the designation until the growth center board renders its decision on the request. On receipt of such a request, the growth center board shall promptly notify the applicant municipality of the request if that municipality is not the requestor. The growth center board shall convene at the earliest feasible date to consider the request and shall render its decision on the request within 90 days of the date on which the request was filed.

(4) Except as otherwise provided in this section, growth center designation shall extend for a period of 20 years. The state growth center board shall review a growth center designation no less frequently than every five years, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard. For each applicant, the state growth center board may adjust the schedule of review under this subsection so as to coincide with the review of the related and underlying designation of a downtown, village center, or new town center. If, at the time of the review, the state growth center board determines that the growth center no longer meets the standards for designation established in this section, it may take any of the following actions:

- (A) require corrective action;
- (B) provide technical assistance through the coordinated assistance program; or
- (C) remove the growth center's designation, with that removal not affecting any of the growth center's previously awarded benefits.

~~(4)~~(5) At any time a municipality shall be able to apply to the state growth center board for amendment of a designated growth center or any related conditions or other matters, according to the procedures that apply in the case of an original application.

(f) Review by land use panel and issuance of Act 250 findings of fact and conclusions of law. Subsequent to growth center designation by the state growth center board, an applicant municipality may submit a request for findings of fact and conclusions of law under specific criteria of 10 V.S.A. § 6086(a) to the land use panel of the natural resources board for consideration in accordance with the following:

* * *

(6) The decision of the state growth center board pursuant to this section shall not be binding as to the criteria of 10 V.S.A. § 6086(a) in any proceeding before the panel or a district commission.

* * *

(i) Benefits from designation. A growth center designated by the state growth center board pursuant to this section is eligible for the following development incentives and benefits:

(1) Financial incentives.

(A) A municipality may use tax increment financing for infrastructure and improvements in its designated growth center pursuant to the provisions of Title 24 and Title 32. A designated growth center under this section shall be presumed to have met any locational criteria established in Vermont statutes for tax increment financing. The state growth center board may consider project criteria established under those statutes and, as appropriate, may make recommendations as to whether any of those project criteria have been met.

* * *

Sec. 4. EFFECTIVE DATES; TRANSITION; APPLICATION

(a) This section shall take effect on passage.

(b) No later than July 1, 2010, the Vermont planners association, the Vermont League of Cities and Towns, and the Vermont association of regional planning and development shall designate and the governor shall appoint the members of the Vermont growth center board described in Sec. 2 of this act, 24 V.S.A. § 2792(c)(4)–(6), that those provisions authorize them respectively to designate or appoint.

(c) Secs. 1 through 3 of this act shall take effect on September 1, 2010, and shall apply to applications for designation under 24 V.S.A § 2793c that are filed and to reviews of designations under 24 V.S.A § 2793c(e)(4) that are commenced on or after September 1, 2010. The Vermont downtown development board shall have jurisdiction in accordance with prior law to complete consideration of applications for and reviews of such designations that are pending as of September 1, 2010.

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.

Rules Suspended; Bills Messaged

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

S. 207, S. 259, S. 292, H. 607.

Adjournment

On motion of Senator Mazza, the Senate adjourned until nine o'clock in the morning.

THURSDAY, MARCH 18, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 36

A message was received from the House of Representatives by Mr. William M. MaGill, its First 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. 555. An act relating to youth hunting.

H. 600. An act relating to permitted investments by the state treasurer.

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

The House has adopted joint resolutions of the following titles:

J.R.H. 42. Joint resolution in support of Congress's adoption of the Main Street Fairness Act.

J.R.H. 43. Joint resolution urging Congress to amend the Toxic Substances Control Act of 1976.

J.R.H. 44. Joint resolution authorizing the Green Mountain Girls' State program to use the state house on June 23, 2010.

In the adoption 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. 53. Joint resolution related to weekend adjournment.

And has adopted the same in concurrence.

The Governor has informed the House that on the March 17, 2010, he approved and signed a bill originating in the House of the following title:

H. 483. An act relating to approval of the merger of the village of North Westminster and the Town of Westminster and the Charter of the Town of Westminster.

Bill Referred to Committee on Appropriations

S. 226.

Senate 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 medical marijuana dispensaries.

Bill Referred to Committee on Finance

S. 266.

Senate 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 rights of workers' compensation claimants.

Bills Referred

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

H. 555.

An act relating to youth hunting.

To the Committee on Natural Resources and Energy.

H. 600.

An act relating to permitted investments by the state treasurer.

To the Committee on Finance.

Joint Resolutions Referred

J.R.H. 42.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution in support of Congress's adoption of the Main Street Fairness Act.

Whereas, in 1992, the U.S. Supreme Court issued its decision in the case Quill Corporation v. North Dakota, ruling that states could not collect sales taxes from businesses that lacked a physical presence within their borders, and

Whereas, this ruling was based on the theory that states' collection of sales taxes on these businesses was a burden on interstate commerce, and

Whereas, at the time of the ruling, the decision primarily affected catalogue sales, and

Whereas, in 2010, the nation's commercial marketplace has drastically changed, and online sales are now worth \$150 billion annually, and

Whereas, although consumers are not officially excused from paying sales taxes on online sales, the overwhelming majority do not pay sales tax on making an online purchase, and a University of Tennessee study concluded that billions of state sales tax dollars are lost due to nonpayment, and

Whereas, not only are states denied much-needed revenue during these difficult economic times, but local retailers must confront competition from huge merchandisers that lack the overhead expenses of a traditional store and are effectively offering their merchandise tax free, and

Whereas, although in 1992, the U.S. Supreme Court forbade the state of North Dakota from collecting sales taxes from the Quill Corporation, the court held that Congress could enact legislation granting the states the authority to collect sales taxes from retailers with no physical presence in a state, and

Whereas, in order to establish an administrative foundation for the universal collection of state sales taxes, many states, including Vermont, have adopted the Streamlined Sales and Use Tax Agreement, and

Whereas, nationwide, over 1,800 online or remote sellers are now voluntarily collecting state sales tax, and although this is a positive step, it does not address the problem of the nonpayment of state sales taxes comprehensively, and

Whereas, in past sessions of Congress, the Main Street Fairness Act, which would grant federal legislative approval for states to collect sales tax from out-of-state retailers, has been introduced but not passed, and

Whereas, it is anticipated that U.S. Senator Michael Enzi of Wyoming and U.S. Representative William Delahunt of Massachusetts will be introducing this measure in the coming weeks, and

Whereas, the economic vitality of the states demands that Congress enact the Main Street Fairness Act before final adjournment of the 111th Congress, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges U.S. Senator Michael Enzi and U.S. Representative William Delahunt to introduce the Main Street Fairness Act in their respective legislative chambers as soon as possible, and be it further

Resolved: That the General Assembly urges Congress to enact the Main Street Fairness Act following its introduction, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to U.S. Senator Michael Enzi, U.S. Representative William Delahunt, and the Vermont Congressional Delegation.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Finance.

J.R.H. 43.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging Congress to amend the Toxic Substances Control Act of 1976.

Whereas, more than three decades ago, Congress enacted the Toxic Substances Control Act of 1976, Public Law 94-469 (TSCA), to protect human beings and the environment from the adverse impact of dangerous chemicals, and

Whereas, during the 34 years it has been in force, TSCA has resulted in the testing of fewer than 200 of the roughly 80,000 chemicals known to be in industrial products and has banned only five chemicals or chemical groups, and

Whereas, in 2010, the threat that toxic substances pose to human beings has greatly increased, and

Whereas, these substances include carcinogens, mutagens, reproductive or developmental toxins, endocrine disruptors, and persistent or bioaccumulative toxins, and

Whereas, there is an urgent need to broaden and strengthen the regulation of toxic chemicals and substances in order to reduce their threat to human beings and the environment, and

Whereas, the Alliance for a Clean and Healthy Vermont recently issued a report entitled *Toxic Exposures in the Green Mountain State*, and

Whereas, in this report there were published the results of body burden testing conducted on six ordinary Vermonters, and

Whereas, they were tested to determine the presence of four broad categories of chemicals: bisphenol A (BPA), mercury, pesticides, and flame retardants, and

Whereas, the study was designed to determine the presence of any one of approximately 65 specific chemicals, and

Whereas, DDT, which was famously banned in 1972 after enormous publicity concerning its harmful effects on humans and birds, was found in five of the six persons tested, and chlordane, which has also been banned, was found in all of the test participants, and

Whereas, mercury, which is an extremely harmful neurotoxin, was present in four of the six participants, and

Whereas, within each participant's body, there was detected a minimum of 35 of the approximately 65 chemicals within the four broad categories, and

Whereas, beyond the disheartening specific findings was the overall testing result that these contaminants were present in any of the participants, because it is not natural for these "chemicals to be present in any quantity in the human body," and

Whereas, the general assembly believes that protecting Vermonters against dangerous chemicals is a core function of government, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to amend the Toxic Substances Control Act of 1976 to require broader testing and authorize stronger regulation of chemicals known to be dangerous to human health and the environment but with specific language that the states are not preempted from adopting laws that go beyond the federal requirements, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to President Obama, the Vermont Congressional Delegation and Environmental Protection Agency Administrator Lisa Jackson.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Natural Resources and Energy.

Joint Resolution Placed on Calendar**J.R.H. 44.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution authorizing the Green Mountain Girls' State program to use the state house on June 23, 2010.

Whereas, the Green Mountain Girls' State program brings together high school students from all areas of Vermont to our capital city in order to view firsthand the workings of state government, and

Whereas, the lessons learned by these students make a significant contribution to their future growth as valuable citizens and leaders of our state, now therefore be it

Resolved by the Senate and House of Representatives:

That the Sergeant at Arms shall make available the chambers of the house of representatives and the senate and the committee meeting rooms of the state house for the Green Mountain Girls' State Program on Wednesday, June 23, 2010, during regular business hours.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 222. An act relating to recognition of Abenaki tribes.

S. 283. An act relating to amending miscellaneous motor vehicle laws, eliminating the motorcycle rider training program advisory committee, and repealing the interstate compact for motor vehicle safety equipment.

Bill Passed in Concurrence**H. 761.**

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

An act relating to authorization of High-Speed Intercity Passenger Rail Program grants.

Resolution Adopted in Concurrence

Joint House resolution of the following title was read the third time and adopted in concurrence:

J.R.H. 34. Joint resolution in support of the New England Secondary School Consortium.

Bills Amended; Third Readings Ordered**S. 103.**

Senator Kitchel, for the Committee on Transportation, to which was referred Senate bill entitled:

An act relating to ignition interlock drivers' licenses.

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

Sec. 1. LEGISLATIVE INTENT

It is the intent of the general assembly to require the commissioner of motor vehicles to conduct an in-depth study of the most effective and efficient mechanisms for promoting the use of ignition interlock devices or other devices that prevent impaired driving and implementing legislation related to such devices in Vermont. The commissioner also is directed to formulate recommended legislation by January 15, 2011, to advance the general assembly's goal to pass ignition interlock legislation.

Sec. 2. LEGISLATIVE FINDINGS

The general assembly finds that:

(1) In 2008, nearly 12,000 people were killed in crashes attributed to alcohol-impaired driving, which accounted for 32 percent of all traffic fatalities in the United States. Impaired driving is a significant public safety concern.

(2) As a tool to combat impaired driving, 47 states have laws concerning the use of ignition interlock devices. Ignition interlock devices are installed in motor vehicles to prevent them from being started unless the operator blows into the device and the device detects that the operator's alcohol concentration is below a pre-set limit. Devices may be programmed to require periodic retesting while the car is running. About 146,000 ignition interlock devices currently are in use in the United States.

(3) Vermont is one of just three states that has not enacted ignition interlock legislation.

(4) Research shows that ignition interlock devices reduce subsequent arrest rates among both first-time and repeat DUI offenders by 50 to 90 percent while such devices are installed.

(5) Research estimating the costs versus the benefits of ignition interlock programs suggests a \$3.00 benefit for each \$1.00 in program costs for first-time DUI offenders and a \$4.00 to \$7.00 benefit for each \$1.00 in program costs for other DUI offenders.

Sec. 3. IGNITION INTERLOCK DEVICE STUDY

(a) The commissioner of motor vehicles, in consultation with the commissioner of corrections, the court administrator, the department of public safety, state's attorneys and sheriffs, the defender general, the attorney general, the Vermont bar association, and any other organizations or entities the commissioners deem appropriate, shall study and formulate recommended legislation authorizing use of ignition interlock devices or other devices that prevent impaired driving in Vermont. In carrying out this directive, the commissioner shall:

(1) Review current laws, rules, and regulations, and practices regarding use of ignition interlock devices in other states and attempt to ascertain the factors that contribute to the varying success of states in promoting use of ignition interlock devices.

(2) Consider whether legislation should:

(A) require installation of ignition interlock devices by some or all DUI offenders as a condition of license reinstatement;

(B) authorize operation during a suspension period, and, if so, the period of "hard" suspension that must be served prior to such authorization for different classes of DUI offenders;

(C) authorize or require that some or all DUI offenders, at their request, be allowed to install ignition interlock devices in exchange for a reduced period of license suspension;

(D) authorize or require judges to order installation of ignition interlock devices as a condition of probation for some or all DUI offenders;

(E) authorize or require judges to provide incentives (such as reduced fines) to some or all DUI offenders to encourage installation of such devices;

(F) require devices to be installed for a period in excess of usual suspension periods for some or all offenders;

(G) supplement, or operate as an alternative to, the state's abstinence program for persons whose license has been suspended for life;

(H) apply to all impaired driving offenders (i.e., include those whose violations involve operating under the influence of drugs) or only to those whose offense involved operating under the influence of intoxicating liquor;

(I) limit eligibility to certain classes of DUI offenders (i.e., those whose offense did not result in death of another); or

(J) authorize or require installation of ignition interlock devices under any other circumstances.

(3) Consider how any recommended use of ignition interlock devices should be coordinated with the use of electronic monitoring equipment such as global position monitoring equipment, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment.

(4) Study the costs of ignition interlock devices, including installation, monthly lease charges, periodic recalibration, and data downloads and the relative merits of having such costs borne entirely by DUI offenders or partially borne by the state.

(5) Study whether conditions or restrictions (such as hours of operation or limitation to travel to or from work, school, or a treatment program) should be imposed on some or all DUI offenders operating subject to an ignition interlock device requirement.

(6) Study the administrative tasks that must be performed to implement and carry out ignition interlock legislation and the costs associated with them; which agency or agencies are best suited to perform these tasks; and what additional authority or resources this agency or these agencies will need to perform these tasks.

(7) Consider appropriate penalties for DUI offenders required to operate vehicles equipped with ignition interlock devices who tamper with or otherwise circumvent such devices, or operate a vehicle not equipped with such a device, or whose attempt to operate a vehicle is prevented through the functioning of such device, and the due process to which DUI offenders cited for such activities shall be entitled.

(8) Consider appropriate penalties for third parties who tamper with or otherwise circumvent ignition interlock devices or knowingly provide vehicles not equipped with such devices for DUI offenders required to operate vehicles equipped with such devices, and the due process to which persons cited for such activities shall be entitled.

(9) Consider the degree to which the state should monitor, utilize, and impose sanctions based on data obtained from ignition interlock devices.

(10) Consider and study any other issues deemed relevant to ignition interlock device policy and legislation.

(b) The commissioner shall report his or her findings and recommended legislation to the senate and house committees on transportation, the senate and house committees on judiciary, and the joint corrections oversight committee no later than January 15, 2011.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage, the title of the bill be amended to read:

“An act relating to the study and recommendation of ignition interlock device legislation.”

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.

S. 153.

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

An act relating to preventing conviction of innocent persons.

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

Sec. 1. LEGISLATIVE INTENT; FORENSIC LABORATORY OVERSIGHT

The general assembly finds that at this time, there is not sufficient need for a forensic laboratory oversight commission, provided the Vermont crime laboratory continues to be properly accredited.

Sec. 2. PRESERVATION OF EVIDENCE

(a)(1) It is the intent of the general assembly that on and after July 1, 2012, notwithstanding any other provision of law, any item of physical evidence containing biological material that is secured in connection with a criminal case or investigation shall be retained by the government entity having custody of the evidence for the period of time that:

(A) the statute of limitations has not expired for a crime that remains unsolved; and

(B) a person remains incarcerated, on probation or parole, or subject to registration as a sex offender in connection with a criminal case.

(2) For purposes of this section, criminal case or investigation shall include only the following offenses:

(A) arson causing death as defined in 13 V.S.A. § 501;

(B) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(C) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);

(D) aggravated assault as defined in 13 V.S.A. § 1024;

(E) aggravated murder as defined in 13 V.S.A. § 2311 and murder as defined in 13 V.S.A. § 2301;

(F) manslaughter as defined in 13 V.S.A. § 2304;

(G) kidnapping as defined in 13 V.S.A. § 2405;

(H) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

(I) maiming as defined in 13 V.S.A. § 2701;

(J) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

(K) aggravated sexual assault as defined in 13 V.S.A. § 3253.

(L) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); and

(M) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602.

(3) For purposes of this section, “biological evidence” means:

(A) a sexual assault forensic examination kit; or

(B) semen, blood, saliva, hair, skin tissue, or other identified biological material.

(b) The Vermont law enforcement advisory board shall develop a proposal for implementation of this section and present it to the senate and house committees on judiciary no later than January 15, 2011.

(c) The department of public safety, the department of buildings and general services, the police chiefs’ association, and the sheriffs’ association shall develop a proposal for establishing one or more facilities for retention of items of physical evidence containing biological material that is secured in

connection with a criminal case or investigation. Such facilities would be available for use by all Vermont law enforcement agencies. The proposal shall be presented to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011.

Sec. 3. RECORDING CUSTODIAL INTERROGATIONS;
ADMISSIBILITY OF DEFENDANT'S STATEMENT

(a) It is the intent of the general assembly that on and after July 1, 2012, a law enforcement agency shall make an audio or an audio and visual recording of any custodial interrogation of a person when it is conducted in a place of detention after the person is arrested in relation to the investigation or prosecution of a felony.

(b) The Vermont law enforcement advisory board shall develop a proposal for implementation of this section and present it to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011. The proposal shall address the costs associated with purchasing, installing, and maintaining audio and visual recording as required by this section.

Sec. 4. EYEWITNESS IDENTIFICATION BEST PRACTICES

(a) The general assembly finds that eyewitness misidentification remains the single largest contributing factor to wrongful conviction. According to the Innocence Project, there are currently 249 DNA exonerations across the nation, and in nearly 80 percent of them, there was at least one misidentification.

(b) A statewide study committee created by No. 60 of the Acts of 2007 reported that the Vermont police academy currently teaches best practices regarding eyewitness identification.

(c) To ensure that law enforcement agencies statewide are employing best practices with regard to eyewitness identification, the Vermont law enforcement advisory board shall develop a proposal to establish best practices that are well suited for Vermont and its many, small rural law enforcement agencies, including consideration of conditions for the use and administration of show-ups, use of blind administrators for lineups, proper filler selection in live or photo lineups, instructions for eyewitnesses prior to a live or photo lineup, and confidence statements from eyewitnesses. The Vermont law enforcement advisory board shall present its proposal to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011. The proposal shall address the costs associated with purchasing, installing, and maintaining audio and visual recording as required by this section.

Sec. 5. 13 V.S.A. § 4010 is amended to read:

§ 4010. GUN SILENCERS

A person who manufactures, sells ~~or~~ uses, or possesses with intent to sell or use, an appliance known as or used for a gun silencer shall be fined \$25.00 for each offense. The provisions of this section shall not prevent the use or possession of gun silencers ~~for military purposes when so used or possessed under proper military authority and restriction~~ by:

(1) a certified, full-time law enforcement officer in connection with his or her duties and responsibilities and in accordance with the policies and procedures of that officer's agency or department; or

(2) the Vermont National Guard in connection with its duties and responsibilities.

Sec. 6. EFFECTIVE DATE

This act shall take effect upon 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 pending the question, Shall the bill be read a third time?, Senator Sears on behalf of the Committee on Judiciary moved to amend the bill, as amended as follows:

First: In Sec. 2, by striking out subsection (a)(1) in its entirety and inserting in lieu thereof the following:

(a)(1) The general assembly finds that it is in the interest of justice that Vermont establish a system for the preservation of any item of physical evidence containing biological material that is secured in connection with a criminal case or investigation by the government entity having custody of the evidence for the period of time that:

Second: In Sec. 3, by adding a subsection (c) to read as follows:

(c) In the first year of the 2011–2012 biennium, the senate and house committees on judiciary shall consider the proposal required by subsection (b) of this section for the purpose of enacting statutes by the date of adjournment in 2012 to implement a plan for audio and visual recording of any custodial interrogation of a person when it is conducted in a place of detention after the person is arrested in relation to the investigation or prosecution of a felony.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved to amend the bill in Sec. 5, 13 V.S.A. § 4010, in subdivision (1) after the words “law enforcement officer” by adding the following: or department of fish and wildlife employee and after the word “officer’s” by adding or employee’s

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Consideration Resumed; House Proposal of Amendment Concurred in with Further Proposal of Amendment

S. 77.

Consideration was resumed on Senate bill entitled:

An act relating to the disposal of electronic waste.

Thereupon, the pending question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment?, was agreed to.

Bills Amended; Third Readings Ordered

S. 171.

Senator Mullin, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

An act relating to nutritional labeling of food by chain restaurants.

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

Sec. 1. STATUTORY REVISION

18 V.S.A. §§ 4051–4071 shall be recodified as subchapter 1 (labeling for marketing and sale) of chapter 82 of Title 18.

Sec. 2. 18 V.S.A. chapter 82, subchapter 2 is added to read:

Subchapter 2. Menu Labeling

§ 4086. MENUS AND MENU BOARDS

(a) Except as otherwise provided in 4091 of this title, in the case of food that is a standard menu item that is offered for sale in a restaurant or similar retail food establishment that is part of a chain with 20 or more locations doing business under the same name, regardless of the type of ownership of the locations and offering for sale substantially the same menu items, the restaurant or similar retail food establishment shall disclose the information described in subsection (b) of this section.

(b) Except as otherwise provided in section 4091 of this title, the restaurant or similar retail food establishment shall disclose in a clear and conspicuous manner:

(1) On a menu listing an item for sale:

(A) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(B) a succinct statement concerning suggested daily caloric intake, as specified by federal regulation or, in the absence of an applicable federal regulation, by the commissioner of health by rule, posted prominently on the menu and designed to enable the public to understand, in the context of a total daily diet, the significance of the caloric information that is provided on the menu.

(2) On a menu board, including a drive-through menu board:

(A) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(B) a succinct statement concerning suggested daily caloric intake, as specified by federal regulation or, in the absence of an applicable federal regulation, by the commissioner of health by rule, posted prominently on the menu board, designed to enable the public to understand, in the context of a total daily diet, the significance of the nutrition information that is provided on the menu board.

(3)(A) In a written form, available on the premises of the restaurant or similar retail establishment and to the consumer upon request, the following nutrition information:

(i) the total number of calories in each serving size or other unit of measure of the food that are:

(I) derived from any source; and

(I) derived from the total fat; and

(ii) the amount of each of the following nutrients: Total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein contained in each serving size or other unit of measure;

(B) To the extent that federal statutes or regulations require disclosure of different or additional nutrition information, a restaurant or similar retail establishment that follows the federal law shall be deemed to be in compliance with the requirements of this subdivision (3).

(4) On the menu or menu board, a prominent, clear, and conspicuous statement regarding the availability of the information described in subdivision (3) of this subsection.

§ 4087. SELF-SERVICE FOOD AND FOOD ON DISPLAY

Except as otherwise provided in section 4091 of this title, in the case of food sold at a salad bar, buffet line, cafeteria line, or similar self-service facility, and for self-service beverages or food that is on display and that is visible to customers, a restaurant or similar retail food establishment shall place adjacent to each food offered a sign that lists calories per displayed food item or per serving.

§ 4088. REASONABLE BASIS

For the purposes of this chapter, a restaurant or similar retail food establishment shall have a reasonable basis for its nutrient content disclosures, including nutrient databases, cookbooks, laboratory analyses, and other reasonable means, as described in Section 101.10 of Title 21, Code of Federal Regulations, or any successor regulation, or in a related guidance of the United States Food and Drug Administration.

§ 4089. MENU VARIABILITY AND COMBINATION MEALS

Except as otherwise provided by federal law or regulation, the commissioner of health shall establish by rule, pursuant to chapter 25 of Title 3, standards for determining and disclosing the nutrient content for standard menu items that come in different flavors, varieties, or combinations, but which are listed as a single menu item, such as soft drinks, ice cream, pizza, doughnuts, or children's combination meals, through means determined by the commissioner, including ranges, averages, or other methods.

§ 4090. ADDITIONAL INFORMATION

Except as otherwise provided by federal law or regulation, if the commissioner of health determines that a nutrient, other than a nutrient required under subdivision 4086(b)(3) of this title, should be disclosed for the purpose of providing information to assist consumers in maintaining healthy dietary practices, the commissioner may require, by rule, disclosure of such nutrient in the written form required under subdivision 4086(b)(3).

§ 4091. NONAPPLICABILITY TO CERTAIN FOOD

Sections 4086 through 4090, inclusive, of this chapter shall not apply to:

(1) items that are not listed on a menu or menu board, such as condiments and other items placed on the table or counter for general use;

(2) daily specials, temporary menu items appearing on the menu for less than 60 days per calendar year, or custom orders; or

(3) such other food that is part of a customary market test appearing on the menu for less than 90 days, under terms and conditions established by federal law or regulation, if applicable; if not applicable, then under terms and conditions established by the commissioner of health by rule.

§ 4092. VOLUNTARY PROVISION OF NUTRITION INFORMATION

(a) An authorized official of any restaurant or similar retail food establishment not subject to the requirements of this chapter may elect to be subject to such requirements by registering biannually the name and address of such restaurant or similar retail food establishment with the Secretary of the U.S. Department of Health and Human Services and the commissioner of health, as specified by the Secretary by regulation and the commissioner by rule.

(b) To the extent allowed by federal law, within 120 days following the effective date of this chapter, the commissioner of health shall engage in rulemaking pursuant to chapter 25 of Title 3 specifying the terms and conditions for implementation of subsection (a) of this section.

(c) Nothing in this section shall be construed to authorize the commissioner of health to require an application, review, or licensing process for any entity to register with the Secretary pursuant to subsection (a) of this section.

§ 4093. RULEMAKING

(a) To the extent permitted under federal law, within one year after the effective date of this chapter, the commissioner of health shall adopt rules pursuant to chapter 25 of Title 3 to carry out the purposes of this chapter.

(b) In adopting rules, the commissioner shall:

(1) consider standardization of recipes and methods of preparation, reasonable variation in serving size and formulation of menu items, space on menus and menu boards, inadvertent human error, training of food service workers, variations in ingredients, and other factors, as the commissioner shall determine;

(2) specify the format and manner of the nutrient content disclosure requirements under this chapter; and

(3) reasonably align the rules, to the extent practicable, with federal and other states' laws on menu labeling.

(c) No later than January 15, 2011, the commissioner shall report to the house committee on human services and the senate committee on health and welfare a report on the commissioner's progress toward adopting rules under this section.

§ 4094. DEFINITIONS

To the extent not inconsistent with federal law, as used in this chapter:

(1) "Menu" or "menu board" means the primary writing of the restaurant or other similar retail food establishment from which a consumer makes an order selection.

(2) "Restaurant" or "other similar retail food establishment" means an establishment from which food or beverage of the type for immediate consumption is sold, whether such food is consumed on the premises or not.

(A) "Restaurant" shall not include any school, hospital, nursing home, assisted living facility, or any restaurant-like facility operated by or in connection with a school, hospital, medical clinic, nursing home, or assisted living facility providing food for students, patients, visitors, and their families.

(B) "Restaurant" shall not include grocery stores, except for separately owned food facilities to which this section otherwise applies that are located in a grocery store. For purposes of this subdivision, "grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry. The term "grocery store" includes convenience stores.

(C) "Restaurant" shall not include any fraternal organization or any organization whose members consist solely of veterans of the armed forces of the United States.

§ 4095. ENFORCEMENT; LIABILITY; PENALTY

(a) The commissioner of health or duly authorized agents or employees who inspect restaurants and food establishments on behalf of the department of health shall be required to determine that the nutrition information required under this subchapter is listed on the menu or menu board, and that any additional required information is available for customers upon request. If, upon inspection, the required information is not clearly visible on a menu or menu board or the additional required information is not available upon

request, the commissioner or inspector shall note such fact on the inspection report and cause a corresponding reduction in points from the restaurant's or other food establishment's rating score.

(b) Nothing in this section shall be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state or federal law or to limit any claim, right of action, or civil liability that otherwise exists under state or federal law.

(c) No private right of action shall arise from this subchapter. The sole enforcement authority for this subchapter shall be the state of Vermont.

§ 4096. RELATION TO OTHER LAWS

(a) To the extent any provision of this chapter is inconsistent with or preempted by federal law or regulation, the federal provision shall apply.

(b) To the extent permitted by federal law, nothing in this chapter shall be construed to restrict the ability of cities or towns to impose labeling requirements in excess of those required by this chapter.

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 pending the question, Shall the bill be read a third time?, Senators Ayer, Campbell, Giard, Mazza, McCormack, Nitka, Scott, and Shumlin moved to amend the bill as follows:

First: In Sec. 2, 18 V.S.A. by striking out § 4091 in its entirety and inserting a new § 4091 to read as follows:

§ 4091. NONAPPLICABILITY TO CERTAIN FOOD

Sections 4086 through 4090, inclusive, of this chapter shall not apply to:

(1) items that are not listed on a menu or menu board, such as condiments and other items placed on the table or counter for general use;

(2) daily specials, temporary menu items appearing on the menu for fewer than 60 days per calendar year, or custom orders;

(3) such other food that is part of a customary market test appearing on the menu for fewer than 90 days, under terms and conditions established by federal law or regulation, if applicable; if not applicable, then under terms and conditions established by the commissioner of health by rule; or

(4) alcoholic beverages.

Second: In Sec. 2, 18 V.S.A. § 4094, by inserting a subdivision (3) to read as follows:

(3) “Standard menu item” means any item listed on a menu or menu board by a restaurant, but excluding alcoholic beverages.

Third: In Sec. 2, 18 V.S.A. § 4096, by striking subsection (a) in its entirety and removing the subsection designation from subsection (b)

Which was agreed to.

Thereupon, third reading of the bill was ordered.

S. 182.

Senator Ashe, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to determining unemployment compensation experience rating for successor businesses.

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

Sec. 1. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS’ EXPERIENCE-RATING RECORDS;
DISCLOSURE TO SUCCESSOR ENTITY

* * *

(b)(1) Disclosure of contribution rate to successor entity. Any individual or employing unit who in any manner succeeds to or acquires the organization, trade, or business or substantially all of the assets of any employer who has been operating ~~his or her~~ the business within two weeks prior to the acquisition, except any assets retained by the employer incident to the liquidation of ~~his or her~~ the employer’s obligations, and who thereafter continues the acquired business shall be considered to be a successor to the predecessor from whom the business was acquired and, if not already an employer before the acquisition, shall become an employer on the date of the acquisition. The commissioner shall transfer the experience-rating record of the predecessor employer to the successor employer. If the successor was not an employer before the date of acquisition, ~~his or her~~ the successor’s rate of contribution for the remainder of the rate year shall be the rate applicable to the predecessor employers with respect to the period immediately preceding the date of acquisition if there was only one predecessor or there were only predecessors with identical rates. If the predecessors’ rates were not identical, the commissioner shall determine a rate based on the combined experience of all the predecessor employers. If the successor was an employer before the

date of acquisition, the contribution rate which was assigned to the successor for the rate year in which the acquisition occurred will remain assigned to the successor for the remainder of the rate year, after which the experience-rating record of the predecessor shall be combined with the experience rating of the successor to form the single employer experience-rating record of the successor. At any time prior to the issuance of the certificate required by subsection 1322(b) of this chapter, an employing unit shall, upon request of a potential successor, disclose to the potential successor its current experience rating record.

* * *

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.

**Recommendation of Amendment; Consideration Interrupted by Recess
S. 279.**

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

An act relating to nonunanimous jury verdicts in civil actions.

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

Sec. 1. 12 V.S.A. § 1950 is added to read:

§ 1950. NUMBER OF JURORS REQUIRED FOR A VERDICT IN A CIVIL ACTION

(a) In a civil action, the verdict or finding of at least eleven jurors out of the twelve jurors serving on a jury shall constitute the verdict or finding of the jury

(b) This section shall not affect the ability of the parties to stipulate that the jury may consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury as provided by Rule 48 of the Vermont Rules of Civil Procedure.

Sec. 2. REPORT FROM COURT ADMINISTRATOR

On or before January 15, 2014, the office of the court administrator shall report to the senate and house committees on judiciary on the implementation and identifiable effects of this act. The report shall address whether the number of hung juries or the average amount of damages awarded has changed since adoption of this act, whether there are any discernable impacts on the

frequency and duration of medical malpractice litigation, whether there are any positive or negative impacts on the court system itself, and any appropriate recommendations, including whether this act should be repealed as provided in Sec. 3 of this act.

Sec. 3. SUNSET

On January 15, 2015, Sec. 1 of this act (nonunanimous jury verdicts in civil actions) is repealed.

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, and pending the question, Shall the bill be amended as recommended by the Committee on Judiciary?, Senator Campbell requested and was granted leave to withdraw the recommendation of amendment of the Committee on Judiciary.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Campbell, on behalf of the Committee on Judiciary, moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. § 1950 is added to read:

§ 1950. NUMBER OF JURORS REQUIRED FOR A VERDICT IN A CIVIL ACTION

(a) In a civil action, unless the parties stipulate otherwise, the verdict or finding of the jury shall be unanimous or with not more than one juror dissenting.

(b) This section shall not affect the ability of the parties to stipulate that the jury may consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury as provided by Rule 48 of the Vermont Rules of Civil Procedure.

Sec. 2. REPORT FROM COURT ADMINISTRATOR

On or before January 15, 2014, the office of the court administrator shall report to the senate and house committees on judiciary on the implementation and the identifiable effects of this act. The report shall address whether the number of hung juries or the average amount of damages awarded has changed since adoption of this act, whether there are any discernible impacts on the frequency and duration of medical malpractice litigation, whether there are any positive or negative impacts on the court system itself, and any appropriate recommendations, including whether this act should be repealed as provided in Sec. 3 of this act.

Sec. 3. SUNSET

On January 15, 2015, Sec. 1 of this act (nonunanimous jury verdicts in civil actions) is repealed.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Campbell, on behalf of the Committee on Judiciary?, the Senate recessed in order to attend the joint assembly.

Joint Assembly

At ten o'clock and thirty minutes in the morning, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 51. Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Environmental Judge.

The Senate repaired to the hall of the House.

Having returned therefrom, at eleven o'clock and twenty minutes in the morning, the President *pro tempore* assumed the Chair.

Consideration Resumed; Consideration Postponed**S. 279.**

Consideration was resumed on Senate bill entitled:

An act relating to nonunanimous jury verdicts in civil actions.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Campbell, on behalf of the Committee on Judiciary?, action on the bill was postponed until the next legislative day.

Bills Amended; Third Readings Ordered**S. 263.**

Senator Miller, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to job creation and economic development.

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

Sec. 1. 11A V.S.A. chapter 21 is added to read:

CHAPTER 21. BENEFIT CORPORATIONS

§ 21.01. SHORT TITLE

§ 21.02. LAW APPLICABLE

§ 21.03. DEFINITIONS

§ 21.04. INCORPORATION OF A BENEFIT CORPORATION

§ 21.05. ELECTION OF EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION

§ 21.06. MERGER AND SHARE EXCHANGE

§ 21.07. TERMINATION OF BENEFIT CORPORATION STATUS BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE REQUIRED

§ 21.08. CORPORATE PURPOSE

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

§ 21.10. BENEFIT DIRECTOR

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

§ 21.12. BENEFIT OFFICER

§ 21.13. RIGHT OF ACTION

§ 21.14. ANNUAL BENEFIT REPORT

§ 21.01. SHORT TITLE

This chapter shall be known and may be cited as the “Vermont Benefit Corporations Act.”

§ 21.02. LAW APPLICABLE

(a) This chapter shall apply only to a domestic corporation meeting the definition of a benefit corporation in subdivision 21.03(a)(1) of this title. The provisions of this title other than those set forth in this chapter shall apply to a benefit corporation in the absence of a contrary or inconsistent provision in this chapter. A corporation whose status as a benefit corporation terminates shall immediately become subject to the obligations and rights of a general corporation as provided in this title.

(b) The existence of a provision of this chapter does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation that is not a benefit corporation. This chapter does not affect any

statute or rule of law as it applies to a corporation that is not a benefit corporation.

(c) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with any provision of this chapter.

(d) Terms that are defined in other chapters of this title shall have the same meaning when used in this chapter, except that in this chapter, "corporation" shall have the meaning set forth in section 1.40 of this title.

§ 21.03. DEFINITIONS

(a) As used in this chapter:

(1) "Benefit corporation" means a corporation as defined in section 1.40 of this title whose articles of incorporation include the statement "This corporation is a benefit corporation."

(2) "Benefit director" means the director designated as the benefit director of a benefit corporation as provided in section 21.10 of this title.

(3) "Benefit officer" means the officer of a benefit corporation, if any, designated as the benefit officer as provided in section 21.12 of this title.

(4) "General public benefit" means a material positive impact on society and the environment, as measured by a third-party standard, through activities that promote some combination of specific public benefits.

(5) "Independent" means that a person has no material relationship with a benefit corporation or any of its subsidiaries (other than the relationship of serving as the benefit director or benefit officer), either directly or as an owner or manager of an entity that has a material relationship with the benefit corporation or any of its subsidiaries. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(A) the person is, or has been within the last three years, an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer;

(B) an immediate family member of the person is, or has been within the last three years, an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries; or

(C) the person, or an entity of which the person is a manager or in which the person owns beneficially or of record five percent or more of the equity interests, owns beneficially or of record five percent or more of the shares of the benefit corporation.

(6) “Specific public benefit” includes:

(A) providing low income or underserved individuals or communities with beneficial products or services;

(B) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) preserving the environment;

(D) improving human health

(E) promoting the arts or sciences or the advancement of knowledge;

(F) increasing the flow of capital to entities with a public benefit purpose; and

(G) the accomplishment of any other identifiable benefit for society or the environment.

(7) “Subsidiary” of a person means an entity in which the person owns beneficially or of record 50 percent or more of the equity interests.

(8) “Third-party standard” means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

(A) is developed by a person that is independent of the benefit corporation; and

(B) is transparent because the following information about the standard is publicly available:

(i) the factors considered when measuring the performance of a business;

(ii) the relative weightings of those factors; and

(iii) the identity of the persons who developed and control changes to the standard and the process by which those changes are made.

(b) For purposes of subdivisions (a)(5)(C) and (7), a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

§ 21.04. INCORPORATION OF A BENEFIT CORPORATION

A benefit corporation shall be formed in accordance with sections 2.01, 2.02, 2.03, and 2.05 of this title, except that its articles of incorporation shall also contain the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation.

§ 21.05. ELECTION OF EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION

Any corporation organized under this title may become a benefit corporation by amending its articles of incorporation to add the statement required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.06. MERGER AND SHARE EXCHANGE

(a) A plan of merger or share exchange that if effected would terminate the benefit corporation status of a corporation shall be adopted and shall become effective in accordance with chapter 11 of this title and shall be approved by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

(b) If a corporation that is not a benefit corporation is a party to a plan of merger or share exchange in which the surviving corporation is a benefit corporation, the plan of merger shall be adopted and shall become effective in accordance with chapter 11 of this title, except that the plan shall be approved in the case of the corporation that is not a benefit corporation by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.07. TERMINATION OF BENEFIT CORPORATION STATUS BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE REQUIRED

A corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation, in addition to the provisions required by section 2.02 of this title to be stated in the articles of incorporation of a benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.08. CORPORATE PURPOSE

(a) A benefit corporation shall have the purpose of creating general public benefit. This purpose is in addition to, and may be a limitation on, the purposes of the benefit corporation under subsection 3.01(a) of this title.

(b) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that are the purpose of the benefit corporation to create in addition to its purposes under subsection 3.01(a) of this title and subsection (a) of this section. The adoption of a specific public benefit purpose under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(c) The creation of general and specific public benefit as provided in subsections (a) and (b) of this section is in the best interests of the benefit corporation.

(d) A benefit corporation may amend its articles of incorporation to add, amend, or delete a specific public benefit. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of the vote required by the articles of incorporation or by subsection (e) of this section.

(e) An amendment of the articles of incorporation of a benefit corporation to add, amend, or delete a specific public benefit in the articles of incorporation shall be adopted by a vote of at least two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of

shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

(a) Each director of a benefit corporation, in discharging his or her duties as a director, including the director's duties as a member of a committee:

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) the local and global environment; and

(F) the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;

(2) may consider any other pertinent factors or the interests of any other group that the director determines are appropriate to consider;

(3) shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated its intention to give priority to interests related to its specific public benefit purpose in its articles of incorporation; and

(4) shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of section 8.30 of this title.

(c) A director is not liable for the failure of a benefit corporation to create general or specific public benefit.

(d) A director is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the director performed the duties of his or her office in compliance with section 8.30 of this title and with this section.

(e) A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.10. BENEFIT DIRECTOR

(a) The board of directors of a benefit corporation shall include one director who shall be designated the "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director shall be elected and may be removed in the manner provided by subchapter 1 of chapter 8 of this title and shall be an individual who is independent of the benefit corporation. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(c)(1) The benefit director shall be responsible for the preparation of the annual benefit report required under section 21.14 of this title.

(2) The benefit director may retain an independent third party to audit the annual benefit report or conduct any other assessment of the benefit corporation's social and environmental performance.

(3) The benefit director shall prepare and shall include in the annual benefit report a statement whether, in the opinion of the benefit director:

(A) the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report; and

(B) the directors and officers acted in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively.

(4) If in the opinion of the benefit director the benefit corporation failed to act in accordance with its general and any specific public benefit purposes or if its directors or officers failed to act in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed to so act.

(d) The acts and omissions of an individual in the capacity of a benefit director shall constitute for all purposes acts and omissions of that individual in the capacity of a director of the benefit corporation.

(e) If the articles of incorporation of a benefit corporation that is a close corporation dispense with a board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation shall provide that the persons who perform the duties of a board of directors shall include a person with the powers, duties, rights, and immunities of a benefit director.

(f) Regardless of whether the articles of incorporation of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by subdivision 2.02(b)(4) of this title, a benefit director shall not be personally liable for any act or omission taken in his or her official capacity as a benefit director unless the act or omission is not in good faith, involves intentional misconduct or a knowing violation of law, or involves a transaction from which the director directly or indirectly derived an improper personal benefit.

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

(a) An officer of a benefit corporation shall consider the interests and factors described in subsection 21.09(a) of this title in the manner provided in that subsection when:

(1) the officer has discretion in how to act or not act with respect to a matter; and

(2) it reasonably appears to the officer that the matter may have a material effect on:

(A) the creation of general or specific public benefit by the benefit corporation; or

(B) any of the interests or factors referred to in section 21.09(a)(1) of this title.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of the fiduciary duty of an officer to the benefit corporation.

(c) An officer is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the officer performed the duties of the position in compliance with section 8.41 of this title and with this section.

(d) An officer is not liable for the failure of a benefit corporation to create general or specific public benefit.

(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.12. BENEFIT OFFICER

A benefit corporation may have an officer designated the "benefit officer" who shall have the authority and shall perform the duties in the management of the benefit corporation relating to the purpose of the corporation to create public benefit as set forth with respect to the office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to the office by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of the office.

§ 21.13. RIGHT OF ACTION

(a) The duties of directors and officers under this chapter and the general and specific public benefit purposes of a benefit corporation may be enforced only in a benefit enforcement proceeding, and no person may bring such an action or claim against a benefit corporation or its directors or officers except as provided in this section.

(b) A benefit enforcement proceeding may be commenced or maintained only by:

(1) a shareholder that would otherwise be entitled to commence or maintain a proceeding in the right of the benefit corporation on any basis;

(2) a director of the corporation;

(3) a person or group of persons that owns beneficially or of record 10 percent or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

(4) such other persons as may be specified in the articles of incorporation of the benefit corporation.

(c) As used in this chapter, “benefit enforcement proceeding” means a claim or action against a director or officer for:

(1) failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation; or

(2) violation of a duty or standard of conduct under this chapter.

§ 21.14. ANNUAL BENEFIT REPORT

(a) A benefit corporation shall deliver to each shareholder, in a format approved by the directors, an annual benefit report, which shall include:

(1)(A) a statement of the specific goals or outcomes identified by the benefit corporation for creating general public benefit and any specific public benefit for the period of the benefit report;

(B) a description of the actions taken by the benefit corporation to attain the identified goals or outcomes and the extent to which the goals or outcomes were attained;

(C) a description of any circumstances that hindered the attainment of the identified goals or outcomes and the creation of general public benefit or any specific public benefit; and

(D) specific actions the benefit corporation can take to improve its social and environmental performance and attain the goals or outcomes identified for creating general public benefit and any specific public benefit.

(2) an assessment of the social and environmental performance of the benefit corporation prepared in accordance with a third-party standard that has been applied consistently with prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application;

(3) a statement of specific goals or outcomes identified by the benefit corporation and approved by the shareholders for creating general public benefit and any specific public benefit for the period of the next benefit report.

(4) the name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(5) the compensation paid by the benefit corporation during the year to each director in that capacity;

(6) the name of each person that owns beneficially or of record five percent or more of the shares of the benefit corporation; and

(7) the statement of the benefit director described in subsection 21.10(c) of this title.

(b) A benefit corporation shall annually deliver the benefit report to each shareholder within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders.

(c) After reasonable opportunity for review, the shareholders of the benefit corporation shall approve or reject the annual benefit report by majority vote at the annual meeting of shareholders or at a special meeting held for that purpose.

(d) A benefit corporation shall post its most recent benefit report endorsed by its shareholders on the public portion of its website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted. If a benefit corporation does not have a public website, it shall deliver a copy of its most recent benefit report on demand and without charge to any person who requests a copy.

Sec. 2. 11A V.S.A. § 2.02(a) is amended to read:

(a) The articles of incorporation shall set forth:

* * *

(6) one or more classes of shares that together have unlimited voting rights; ~~and~~

(7) one or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution; and

(8) whether the corporation is a benefit corporation under chapter 21 of this title.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

And that the title of the bill be amended to read:

“An act relating to the Vermont Benefit Corporations Act.”

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.

S. 205.

Senator Ayer, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the Revised Uniform Anatomical Gift Act.

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

Sec. 1. 18 V.S.A. chapter 151 is added to read:

CHAPTER 151. REVISED UNIFORM ANATOMICAL GIFT ACT

§ 6001. SHORT TITLE

This chapter may be cited as the “Revised Uniform Anatomical Gift Act.”

§ 6002. DEFINITIONS

As used in this chapter:

(1) “Adult” means an individual who is at least 18 years of age.

(2) “Agent” means an individual:

(A) authorized to make health care decisions on the principal’s behalf by an advance directive executed pursuant to chapter 231 of this title or by a health care power of attorney executed pursuant to the laws of this or another state; or

(B) expressly authorized to make an anatomical gift on the principal’s behalf by any other record signed by the principal.

(3) “Anatomical gift” means a donation of all or part of a human body to take effect after the donor’s death for the purpose of transplantation, therapy, research, or education.

(4) “Decedent” means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.

(5) “Disinterested witness” means a witness other than the spouse, reciprocal beneficiary, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 6011 of this title.

(6) “Document of gift” means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver’s license or nondriver identification card or an inclusion in a donor registry.

(7) “Donor” means an individual whose body or part is the subject of an anatomical gift.

(8) “Donor registry” means a database that identifies donors and complies with the provisions of section 6020 of this title.

(9) “Driver’s license” means a license or permit issued by the Vermont department of motor vehicles to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) “Eye bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) “Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) “Hospital” means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) “Know” means to have actual knowledge.

(14) “Minor” means an individual who is under 18 years of age.

(15) “Nondriver identification card” means a nondriver identification card issued by the Vermont department of motor vehicles pursuant to 23 V.S.A. § 115.

(16) “Organ procurement organization” means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) “Parent” means a parent whose parental rights have not been terminated.

(18) “Part” means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) “Physician” means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) “Procurement organization” means an eye bank, an organ procurement organization, or a tissue bank.

(22) “Prospective donor” means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) “Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) “Recipient” means an individual into whose body a decedent’s part has been or is intended to be transplanted.

(25) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) “Refusal” means a record created under section 6007 of this title that expressly states an intent to bar other persons from making an anatomical gift of an individual’s body or part.

(27) “Sign” means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(28) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) “Technician” means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) “Tissue” means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) “Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

§ 6003. APPLICABILITY

This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

§ 6004. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR’S DEATH

Subject to section 6008 of this title, an anatomical gift of a donor’s body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 6005 of this title by:

(1) the donor, if the donor is an adult or if the donor is a minor and is either:

(A) emancipated; or

(B) authorized under state law to apply for a driver’s license or nondriver identification card and is at least 16 years of age;

(2) an agent of the donor, unless the advance directive or other record prohibits the agent from making an anatomical gift;

(3) a parent of the donor, if the donor is an unemancipated minor; or

(4) the donor’s guardian.

§ 6005. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR’S DEATH

(a) A donor may make an anatomical gift:

(1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor’s driver’s license or nondriver identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) as provided in subsection (b) of this section.

(b) A donor or other person authorized to make an anatomical gift under section 6004 of this title may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Revocation, suspension, expiration, or cancellation of a driver's license or nondriver identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

§ 6006. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH

(a) Subject to section 6008 of this title, a donor or other person authorized to make an anatomical gift under section 6004 of this title may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

(C) subject to subsection (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subdivision (a)(1)(C) of this section must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Subject to section 6008 of this title, a donor or other person authorized to make an anatomical gift under section 6004 of this title may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

§ 6007. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF REFUSAL

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(A) the individual; or

(B) subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to subdivision (a)(1)(B) of this section must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner provided in subsection (a) of this section for making a refusal;

(2) by subsequently making an anatomical gift pursuant to section 6005 of this title that is inconsistent with the refusal; or

(3) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in subsection 6008(h) of this title, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

§ 6008. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT, OR REVOCATION

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 6005 of this title or an amendment to an anatomical gift of the donor's body or part under section 6006 of this title.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 6006 of this title is not a refusal and does not bar another person specified in section 6004 or 6009 of this title from making an anatomical gift of the donor's body or part under section 6005 or 6010 of this title.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 6005 of this title or an amendment to an anatomical gift of the donor's body or part under section 6006 of this title, another person may not make, amend, or revoke the gift of the donor's body or part under section 6010 of this title.

(d) A revocation of an anatomical gift of a donor's body or part under section 6006 of this title by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 6005 or 6010 of this title.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 6004 of this title, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 6004 of this title, an anatomical gift of a part for one or more of the purposes set forth in that section is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 6005 or 6010 of this title.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

§ 6009. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART

(a) Subject to subsections (b) and (c) of this section and unless barred by section 6007 or 6008 of this title, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an agent of the decedent at the time of death who could have made an anatomical gift under subdivision 6004(2) of this title immediately before the decedent's death;

(2) the spouse of the decedent;

(3) the decedent's reciprocal beneficiary, as defined in 15 V.S.A. § 1302;

(4) adult children of the decedent;

(5) parents of the decedent;

(6) adult siblings of the decedent;

(7) adult grandchildren of the decedent;

(8) grandparents of the decedent;

(9) an adult who exhibited special care and concern for the decedent;

(10) the persons who were acting as the guardians of the person of the decedent at the time of death; and

(11) any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subdivision (a)(1), (4), (5), (6), (7), (8), or (10) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 6011 of this title knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

§ 6010. MANNER OF MAKING, AMENDING, OR REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART

(a) A person authorized to make an anatomical gift under section 6009 of this title may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under section 6009 of this title may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 6009 of this title may be:

(1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

§ 6011. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT; PURPOSE OF ANATOMICAL GIFT

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) a hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

(2) subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(3) an eye bank or tissue bank.

(b) If an anatomical gift to an individual under subdivision (a)(2) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable for those purposes. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift shall pass in accordance with subsection (g) of this section, and the parts shall be used for transplantation or therapy, if suitable for those purposes; if not suitable for transplantation or therapy, the gift may be used for research or education.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor,” “organ donor,” or “body donor,” or by a symbol or statement of similar import, the gift shall pass in accordance with subsection (g) of this section, and the parts shall be used for transplantation or therapy, if suitable for those purposes; if not suitable for transplantation or therapy, the gift may be used for research or education.

(g) For purposes of subsections (b), (e), and (f) of this section, the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h), inclusive, of this section, or the decedent’s body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 6005 or 6010 of this title or if the person knows that the decedent made a refusal under section 6007 of this title that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subdivision (a)(2) of this section, nothing in this chapter affects the allocation of organs for transplantation or therapy.

§ 6012. SEARCH AND NOTIFICATION

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) a law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) if no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision (a)(1) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

§ 6013. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT TO EXAMINE

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 6011 of this title.

§ 6014. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Vermont donor registry and any other donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to the Vermont donor registry established pursuant to section 6020 of this title to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to assess the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to maintain the potential medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under section 6011 of this title may conduct any reasonable examination necessary to assess the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this chapter, an examination under subsection (c) or (d) of this section may include serological and blood and tissue compatibility testing, as well as an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in section 6009 of this title having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to subsection 6011(i) and section 6023 of this title, the rights of the person to which a part passes under section 6011 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 6011 of this title, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent. As used in this section, "procedures" include actual physical removal and transplantation of a part but do not include the consent, process, disposal, preservation, quality measures, storage, transportation, or research involving a part.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

§ 6015. COORDINATION OF PROCUREMENT AND USE

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

§ 6016. SALE OR PURCHASE OF PARTS PROHIBITED

(a) Except as otherwise provided in subsection (b) of this section, no person shall, for valuable consideration, knowingly purchase or sell a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

(c) A person who violates subsection (a) of this section shall be imprisoned not more than five years or fined not more than \$50,000.00 or both.

§ 6017. OTHER PROHIBITED ACTS

(a) No person shall, in order to obtain a financial gain, intentionally falsify, forge, conceal, deface, or obliterate a document of gift, an amendment or revocation of a document of gift, or a refusal.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than five years or fined not more than \$50,000.00 or both.

§ 6018. IMMUNITY

(a) A person who acts in accordance with this chapter or with the applicable anatomical gift law of another state or attempts in good faith to do so is not liable for the act in a civil action, criminal prosecution, or administrative proceeding. An act that relies upon a document of gift in a donor registry, a signed statement by a donor in an advance directive, or a donor card shall be presumed to be in good faith.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in subdivision 6009(a)(2), (3), (4), (5), (6), (7), (8), or (9) of this title relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

§ 6019. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY

(a) A document of gift is valid if executed in accordance with:

(1) this chapter;

(2) the laws of the state or country where it was executed; or

(3) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

§ 6020. DONOR REGISTRY

(a) The department of health shall ensure that a registry is developed and maintained to identify people who have authorized a document of gift and shall oversee the operation of the registry.

(b) The department of motor vehicles is authorized to enter into a data use agreement with an organ procurement organization for the purpose of transmitting information identifying persons who have authorized a document of gift at the time of issuance of a driver's license or driver's license renewal and incorporating such information into a donor registry maintained by the organ procurement organization. Such information shall constitute the Vermont donor registry. The department of motor vehicles may secure grants from public and private sources, and receive and disburse funds that are assigned, donated, or bequeathed to the department to cover the costs of receiving and transmitting the document of gift data. As funds become available, documents of gift may be accepted and data forwarded from persons 16 and 17 years of age and persons being issued nondriver identification cards.

(c) The Vermont donor registry shall:

(1) contain a database that includes donors who have authorized an anatomical gift and provide a mechanism for an anatomical gift to be removed from the database;

(2) be accessible to other organ procurement organizations to allow them to obtain relevant information from the donor registry to determine, at or near the time of the death of the donor or a prospective donor, whether the donor or prospective donor has authorized an anatomical gift; and

(3) be accessible 24 hours per day, seven days per week for the purposes specified in subdivisions (1) and (2) of this subsection.

(d) No later than January 15, 2011, the department of motor vehicles shall submit a report on its implementation of a data use agreement with a qualified organ procurement organization to the house and senate committees on government operations, the house committee on human services, and the senate committee on health and welfare.

(e) Personally identifiable information contained in a donor registry about a donor or prospective donor may not be used or disclosed by any organ procurement organization except with the express consent of the donor, prospective donor, or other person making the anatomical gift for any purpose other than to determine, at or near the time of the death of the donor or prospective donor, whether such donor or prospective donor has made, amended, or revoked an anatomical gift.

(f) Nothing in this section shall be construed to prohibit any person from creating or maintaining a donor registry that is not established under this section, provided that any such registry shall comply with the provisions of subsections (c) and (e) of this section.

§ 6021. [Reserved.]

§ 6022. COOPERATION BETWEEN MEDICAL EXAMINER AND PROCUREMENT ORGANIZATION

The chief medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

§ 6023. [Reserved.]

§ 6024. HONORING DONOR INTENT

A person's decision to make a donation of that person's own organ or tissue after death shall be honored. In the absence of a revocation or amendment of an anatomical gift, health care providers and procurement organizations shall act in accordance with the donor's decision and may take appropriate actions to effect the anatomical gift.

§ 6025. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 6026. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(a) of that act, 15 U.S.C. Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Sec. 2. 15 V.S.A. § 1204(e) is amended to read:

(e) The following is a nonexclusive list of legal benefits, protections, and responsibilities of spouses, which shall apply in like manner to parties to a civil union:

* * *

(19) laws relating to the making, revoking and objecting to anatomical gifts by others under ~~18 V.S.A. § 5240~~ 18 V.S.A. § 6009;

* * *

Sec. 3. 15 V.S.A. § 1301(a) is amended to read:

(a) The purpose of this chapter is to provide two persons who are blood-relatives or related by adoption the opportunity to establish a consensual reciprocal beneficiaries relationship so they may receive the benefits and protections and be subject to the responsibilities that are granted to spouses in the following specific areas:

(1) Hospital visitation and medical decision-making under 18 V.S.A. § 1853;

(2) Decision-making relating to anatomical gifts under ~~18 V.S.A. § 5240~~ 18 V.S.A. § 6009;

* * *

Sec. 4. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(3) "Anatomical gift" shall have the same meaning as provided in subdivision ~~5238(1)~~ 6002(3) of this title.

* * *

Sec. 5. 18 V.S.A. § 9702 is amended to read:

§ 9702. ADVANCE DIRECTIVE

(a) An adult may do any or all of the following in an advance directive:

* * *

(15) make, limit, or refuse to make an anatomical gift pursuant to chapter ~~409~~ 151 of this title;

* * *

Sec. 6. 18 V.S.A. § 9715(b) is amended to read:

(b) Nothing in this chapter shall be construed to limit or abrogate an individual's ability to create a document of anatomical gift pursuant to chapter ~~409~~ 151 of this title.

Sec. 7. 23 V.S.A. § 618a is amended to read:

§ 618a. ANATOMICAL GIFT ACT; DONOR; FORM

The commissioner shall provide a form which, upon the licensee's execution, shall serve as a document of an anatomical gift under chapter ~~409~~ 151 of Title 18. An indicator shall be placed on the license of any person who has executed an anatomical gift form in accordance with this section.

Sec. 8. 33 V.S.A. § 2302(a) is amended to read:

(a) When requested in writing by a practicing physician, licensed and resident in this state, the officer having charge of the burial shall deliver the body of a deceased person to be buried under section 2301 of this title to the physician to be used by him or her for the advancement of anatomical science, unless:

* * *

(6) The deceased person is known to have executed an anatomical gift document in accordance with the provisions of the Revised Uniform Anatomical Gift Act.

Sec. 9. REPEAL

Chapter 109 of Title 18 (Uniform Anatomical Gift Act) is repealed.

Sec. 10. EFFECTIVE DATE

This act shall take effect July 1, 2010.

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.

Rules Suspended; Bills Messaged

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

S. 77, S. 222, S. 283, H. 761.

Rules Suspended; Resolution Messaged

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

J.R.H. 34.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the morning.

FRIDAY, MARCH 19, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Robert Sargent of St. Johnsbury.

Message from the House No. 37

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. 132. An act relating to residential electrical installations.

H. 408. An act relating to improving nutrition programs.

H. 648. An act relating to harassment and hazing policies at independent colleges.

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. 280. An act relating to prohibiting texting while operating on a highway.

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 adopted joint resolution of the following title:

J.R.H. 45. Joint resolution urging Google Incorporated to give all due consideration to Vermont applicants for selection to participate in the Google Fiber for Communities project.

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

Bills Referred

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

H. 132.

An act relating to residential electrical installations.

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

H. 408.

An act relating to improving nutrition programs.

To the Committee on Health and Welfare.

H. 648.

An act relating to harassment and hazing policies at independent colleges.

To the Committee on Education.

Joint Resolution Placed on Calendar

J.R.S. 54.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By the Committee on Agriculture,

J.R.S. 54. Joint resolution relating to the payment of dairy hauling costs.

Whereas, in the past three years, the Vermont General Assembly has carefully considered the issue of dairy hauling costs and the impact upon Vermont dairy farmers, and

Whereas, in contrast to market practices prevalent in the Midwest and western dairy states, New England dairy farmers typically are forced to pay the costs of hauling milk from the farm to a buyer's processing plant or similar facility, and

Whereas, dairy hauling costs are incurred by dairy farmers, regardless of the price of milk, and

Whereas, in virtually every other industry, the purchaser of goods pays the costs of transporting the goods from the place of manufacture to the purchaser, and

Whereas, the average dairy hauling costs for a Vermont farm milking roughly 200 cows meet or exceed \$20,000.00 per year, and

Whereas, according to a recent New York study of dairy hauling costs, hauling charges paid by dairy producers range from an annual average of \$0.50 to \$0.57 per hundredweight of milk for all size farms, and the average hauling charge, including transportation credits, ranges from 3.1 to 4.4 percent of the gross value of the farm milk, and

Whereas, pursuant to Vermont's Act 50 (2007), the Vermont Milk Commission carefully considered the potential economic impacts of shifting responsibility for dairy hauling costs from the producer to the purchaser of milk, and

Whereas, the Vermont Milk Commission has concluded, and legislative testimony received from the Vermont Agency of Agriculture, Food and Markets, industry representatives, and dairy farmers has confirmed that shifting the payment of dairy hauling costs from producer to purchaser will increase the price of Vermont milk, making Vermont milk more expensive and less competitive than milk produced in neighboring states, and

Whereas, Vermont, or any other state which unilaterally mandates a shift in the cost of dairy hauling from producer to purchaser, will suffer a competitive disadvantage relative to neighboring producer states due to the increased cost of its milk, and

Whereas, given this reality and the economic crisis facing dairy farmers throughout New England, it is extremely unlikely that any state will elect to be the first to mandate this shift in dairy hauling costs, therefore requiring a solution that is national in scope, and

Whereas, in November 2009, United States Representatives Michael Arcuri and Chris Lee of New York introduced federal legislation (H.R. 4117) to eliminate all hauling costs for milk producers, and

Whereas, United States Secretary of Agriculture Thomas Vilsack has convened a 17-member United States Department of Agriculture Dairy Industry Advisory Committee to review the issues of farm milk price volatility and dairy farmer profitability, and to offer suggestions and ideas on how the United States Department of Agriculture can best address these issues to meet the dairy industry's needs, now therefore be it

Resolved by the Senate and House of Representatives:

That the Vermont General Assembly urges United States Secretary of Agriculture Thomas Vilsack to ensure that dairy hauling costs are considered by the United States Department of Agriculture Dairy Industry Advisory Committee as a means to address dairy farmer profitability, and to pursue a national policy requiring that dairy hauling costs be borne by the marketplace rather than dairy producers, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Agriculture Thomas Vilsack, the Vermont congressional delegation, and the members of the United States Department of Agriculture Dairy Industry Advisory Committee.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Joint Resolution Placed on Calendar

J.R.H. 45.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging Google Incorporated to give all due consideration to Vermont applicants for selection to participate in the Google Fiber for Communities project.

Whereas, pursuant to Act 79 of 2007, the general assembly found that “the availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and life-long learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life” and that “the universal availability” of “broadband services promotes the general good of the state,” and

Whereas, in order to meet this crucial public policy objective, Act 79 provided for the establishment of the Vermont Telecommunications Authority (VTA), whose primary goals included “that all residences and business in all regions of the state have access to affordable broadband services not later than the end of the year 2010,” and

Whereas, although the VTA is working diligently to meet this objective and has made great progress, there are still too many Vermonters who are dependent on 20th century dial-up technology for access to the Internet, and

Whereas, even in Vermont communities that are fortunate enough to have broadband access, the speed and quality of the service are far below the technological standards that are available in other nations, as is true in nearly all broadband systems in the United States, and

Whereas, in order to test in the United States the use of greatly improved broadband service that is delivered at the amazing speed of one gigabit per second, 100 times faster than the speed currently available to most U.S. residents, Google Inc. has organized the Google Fiber for Communities project, and

Whereas, in this project, Google Inc. will select a limited number of communities nationwide with populations of at least 50,000 and up to 500,000 to be wired with fiber-to-the-home connections, and

Whereas, as a first step, the interested communities are required to submit an application to Google Inc. no later than March 26, 2010, and

Whereas, each community's new connectivity will serve as a platform for testing next-generation Internet applications and new deployment (construction) techniques to build fiber networks, and these new Google networks will be operated as open access systems allowing users a choice of multiple service providers, and

Whereas, the VTA board is applying on behalf of the state of Vermont with a daring proposal that the Google Fiber for Communities project be conducted in the Green Mountain State with the entire state serving as the test community, and

Whereas, as a state with a population of slightly over 600,000, Vermont would serve as an excellent testing ground for Google Inc. to experiment with new Internet capacities in urban and rural areas and to develop new ways of constructing fiber systems across Vermont's imposing mountainous geography, and

Whereas, Governor Douglas has expressed his support for the VTA's application for Vermont to be selected, as a state, to participate in the Google Fiber for Communities project, and

Whereas, aside from the VTA application, individual Vermont municipalities are applying to be selected as a Google Fiber Community and have developed innovative and worthy proposals for Google Inc.'s review, and

Whereas, the state of Vermont would be an ideal candidate, based either on the proposal of the VTA or on those of individual municipalities, to host one or more Google Fiber for Communities projects, especially as Google Inc. has already established an administrative presence in the state with an office in White River Junction, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Google Inc. to give all due consideration to Vermont applicants, both the Vermont Telecommunications Authority and local municipalities, for selection to participate in the Google Fiber for Communities project, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Google Inc.'s chairman of the board and chief executive officer, Eric Schmidt, to senior vice president for corporate development and chief legal officer David Drummond, to the Vermont Telecommunications Authority's executive director, Thomas Murray, and to the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Bill Amended; Bill Passed

S. 64.

Senate bill entitled:

An act relating to growth center designations and appeals of such designations.

Was taken up.

Thereupon, pending third reading of the bill, Senators Miller and Snelling moved to amend the bill as follows:

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

Sec. 4. ENTERPRISE ZONE STUDY COMMITTEE

(a) Creation of committee. There is created an enterprise zone study committee (the committee) to evaluate the inclusion of industrial and business parks in enterprise zones that receive financial and permit review incentives that are the same as or similar to those provided to designated growth centers under 24 V.S.A. § 2793c.

(b) Membership. The committee shall be composed of the following members:

(1) The secretary of commerce and community development or designee, who shall be the chair.

(2) The chair of the natural resources board or designee, who shall be the vice chair.

(3) A representative from each of the following organizations:

(A) Lake Champlain Regional Chamber of Commerce, Inc.

(B) Vermont Planners Association.

(C) Vermont association of planning and development agencies.

(D) Smart Growth Vermont.

(E) Vermont Natural Resources Council, Inc.

(F) A person having expertise in real estate development jointly agreed upon by the governor, the speaker of the house, and the president pro tempore.

(G) Vermont League of Cities and Towns.

(H) A representative of a regional development corporation chosen by the 12 regional development corporations.

(I) Vermonters for a Clean Environment, Inc.

(c) Powers and duties.

(1) The committee shall study each of the following issues:

(A) The potential inclusion of industrial and business parks in the state into enterprise zones.

(B) The provision of financial benefits and funding priorities to those zones, including benefits and priorities that are the same as or similar to the financial benefits and funding priorities provided to a designated growth center under 24 V.S.A. § 2793c.

(C) The provision of expedited permit review processes to those zones, including processes that are the same as or similar to those provided to a designated growth center under 24 V.S.A. § 2793c.

(D) The relationship of those zones to designated downtowns, village centers, new town centers, growth centers, and Vermont neighborhoods under chapter 76A of Title 24.

(E) The relationship of those zones to lands outside areas designated under chapter 76A of Title 24.

(F) A process for assuring the compliance of enterprise zones with 24 V.S.A. § 4302 (purpose, goals of regional and municipal planning).

(G) How any planning or approval process for enterprise zones may relate to current planning and designation processes applicable to downtowns, village centers, new town centers, growth centers, and Vermont neighborhoods under chapters 76A and 117 of Title 24.

(H) The effect that passage of this act will have on the acreage of areas available for growth center designation under 24 V.S.A. § 2793c.

(I) The extent to which municipalities have used the processes for designating growth centers and Vermont neighborhoods under 24 V.S.A. §§ 2793c and 2793d.

(2) For purposes of its study of these issues, the committee shall have the assistance of the agencies of commerce and community development and of natural resources and the natural resources board.

(3) In performing its study of these issues, the committee:

(A) Shall review all prior reports and studies related to growth centers in Vermont.

(B) Shall inventory and map locations that are served by municipal wastewater and water supply services and that are otherwise suitable for infill development and redevelopment, giving due regard to the location of important natural resources and primary agricultural soils.

(C) Shall inventory and map all existing industrial parks as defined under 10 V.S.A. § 212(7), including all industrial parks described in 10 V.S.A. § 6093(a)(4)(A).

(D) Shall include the inventories and maps described in subdivisions (B) and (C) of this subdivision in the report presented under subsection (d) of this section. In creating these maps and inventories, the committee shall have the assistance of the regional planning commissions and regional development corporations of the state.

(d) Report. By November 15, 2010, the committee shall report to the house committees on commerce and economic development and on natural resources and energy and the senate committees on economic development, housing and general affairs and on natural resources and energy with its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; voting. The committee may meet as needed, and shall cease to exist on February 1, 2011. Meetings shall be at the call of the chair, the vice chair, or any four members of the

committee, with at least one week's notice to all members. The committee shall make decisions by majority vote. The provisions of 1 V.S.A. § 172 shall apply.

Second: By renumbering Sec. 4 as Sec. 5; in that section, in subsection (a), after "This section" by inserting the following: and Sec. 4 of this act and in subsection (b), by striking out "24 V.S.A. § 2792(c)(4)-(6)" and inserting the following: 24 V.S.A. § 2792(c)(4)-(7)

Which was agreed to.

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

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 103. An act relating to ignition interlock drivers' licenses.

S. 153. An act relating to preventing conviction of innocent persons.

S. 171. An act relating to nutritional labeling of food by chain restaurants.

S. 182. An act relating to determining unemployment compensation experience rating for successor businesses.

Bill Amended; Bill Passed

S. 205.

Senate bill entitled:

An act relating to the Revised Uniform Anatomical Gift Act.

Was taken up.

Thereupon, pending third reading of the bill, Senators Illuzzi and Sears moved to amend the bill in Sec. 1, by adding a new section, 18 V.S.A. § 6027, to read:

§ 6027. PROTECTION OF INVESTIGATION OR EVIDENCE OF CRIME

Notwithstanding any other provision of this chapter, no action shall be taken under this act to take any anatomical gift when a person has died under suspicious circumstances or when a criminal cause of death is suspected until after a legal investigation by the police or the state's attorney has determined the facts unless the individual seeking to effect the anatomical gift has received the express written approval of the investigating officer and the investigating state's attorney.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the bill in Sec. 1, 18 V.S.A. § 6022, after the word: “organizations” by inserting the following: , consistent with death investigation procedures,

Which was agreed to.

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

Senator Shumlin Assumes the Chair

Bill Passed

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

S. 263. An act relating to the Vermont Benefit Corporations Act.

Consideration Postponed

S. 237.

Senator Snelling, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to operational standards for salvage yards.

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

Sec. 1. 24 V.S.A. §§ 2248 and 2249 are added to read:

§ 2248. SALVAGE YARD OPERATIONAL STANDARDS

(a) Beginning July 1, 2010, a salvage yard shall meet the following operational standards:

(1) The salvage yard shall comply with the screening and fencing requirements of section 2257 of this title.

(2) Vehicles shall be drained of all fluids prior to crushing and within 14 days of receipt by the salvage yard. Fluids shall be drained, collected, and stored according to standards established by the secretary in order to prevent release to the environment. Fluids that shall be drained, collected, and stored include antifreeze, oil, brake fluid, fuel, refrigerants, and transmission fluid.

(3) Vehicles shall be drained and crushed on a nonporous surface that is not subject to flooding and that is sheltered from or not exposed to rain or snow.

(4) A salvage yard shall not be sited or operated within 100 feet of a Class I or Class II wetland as those terms are defined on 10 V.S.A. § 902.

(5) A salvage yard shall not be sited or operated within 300 feet of a potable water supply, as that term is defined in 10 V.S.A. § 1972, unless:

(A) the water supply provides water to the salvage yard; or

(B) the agency of natural resources approves management practices or remedial measures to prevent contamination of the potable water supply.

(b) On or before February 15, 2011, the secretary shall adopt by rule requirements for the siting, operation, and closure of salvage yards. The rules shall establish requirements for:

(1) financial responsibility in amounts necessary to remediate potential environmental contamination caused by the salvage yard;

(2) removal of solid waste or tires from the salvage yard for proper disposal;

(3) establishment and maintenance of screening or fencing of salvage yards from public view;

(4) assuring proper closure of a salvage yard facility;

(5) postclosure environmental monitoring of a salvage yard;

(6) classes or categories of salvage yards, including those handling total loss vehicles from insurance; and

(7) additional measures that the secretary determines necessary for the protection of public health, safety, and the environment.

(c) The secretary may issue a general permit for the regulation of salvage yards under this subchapter. The general permit may include a provision allowing a holder of a valid certificate of registration issued under this subchapter to self-certify compliance with the applicable standards of this subchapter and rules adopted under this subchapter. A general permit issued under this section shall be adopted by rule and may be incorporated into the rule required under subsection (b) of this section.

(d) No person may deliver salvage vehicles or operate a mobile salvage vehicle crusher at a salvage yard that does not hold a certificate of registration under this subchapter. A salvage yard holding a certificate of registration under this subchapter shall post a copy of its current certificate in a clearly visible location in the proximity of each entrance to the salvage yard.

(e) The requirement under subdivision (a)(2) of this section or rules adopted under this section to drain a vehicle within 14 days of receipt shall not apply to a salvage yard holding a certificate of registration under this subchapter that, as of January 1, 2010, is conducting business, the primary activity of which is the handling of total loss vehicles from insurance companies.

§ 2249. SALVAGE YARD OPERATOR TRAINING

At least annually, the owner or operator of a salvage yard shall attend a training workshop conducted by the agency of natural resources regarding the requirements of this subchapter, best management practices, existing and proposed environmental standards, and other applicable federal, state, or municipal requirements.

Sec. 2. 24 V.S.A. § 2241(7) is amended to read:

(7) “Salvage yard” means any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. “Salvage yard” also means any ~~place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway or navigable water, as that term is defined in section of Title 10~~ outdoor area where four or more junk motor vehicles or uninspected motor vehicles are placed, kept, or stored. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

Sec. 3. 24 V.S.A. § 4454(a) is amended to read:

(a) An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under ~~sections~~ section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

Sec. 4. 27 V.S.A. § 612(a) is amended to read:

(a) Notwithstanding the majority decision in *Bianchi v. Lorenz* (1997), for land development, as defined in 24 V.S.A. § 4303~~(3)~~(10), no encumbrance on record title to real estate or effect on marketability shall be created by the failure to obtain or comply with the terms or conditions of any required municipal land use permit as defined in 24 V.S.A. § 4303~~(24)~~(11).

Sec. 5. 24 V.S.A. § 4303(11) is amended to read:

(11) “Municipal land use permit” means any of the following whenever issued:

(A) A zoning, subdivision, site plan, or building permit or approval, any of which relate to “land development” as defined in this section, that has received final approval from the applicable board, commission, or officer of the municipality.

(B) A wastewater system permit issued under any municipal ordinance adopted pursuant to chapter 102 of this title.

(C) Final official minutes of a meeting that relate to a permit or approval described in subdivision (11)(A) or (B) of this section that serve as the sole evidence of that permit or approval.

(D) A certificate of occupancy, certificate of compliance, or similar certificate that relates to the permits or approvals described in subdivision (11)(A) or (B) of this section, if the bylaws so require.

(E) An amendment of any of the documents listed in subdivisions (11)(A) through (D) and (F) of this section.

(F) A certificate of approved location for a salvage yard issued under chapter 61 of this title.

Sec. 6. REPEAL

24 V.S.A. § 2248(a) (statutory operational standards for salvage yards) is repealed February 15, 2011.

Sec. 7. EFFECTIVE DATE

This act shall take effect July 1, 2010.

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. Pending the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, on motion of Senator Snelling, action on the bill was postponed until the next legislative day.

S. 247.

Senator Lyons, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

An act relating to bisphenol A.

Reported recommending that the bill be amended as follows:

First: In Sec. 1, by adding a subdivision (7) to read as follows:

(7) Alternatives to BPA exist, including glass, stainless steel, and aluminum bottles; BPA-free plastic containers, some of which are already used

by several manufacturers of infant formula; foil packets; and powdered foods stored in cardboard boxes.

Second: In Sec. 2, 18 V.S.A. § 1512, in subdivision (a)(4), by adding a third sentence to read as follows: The term shall not include water jugs with a capacity of five or more gallons until such time as a reasonable alternative is identified by the office of the attorney general.

Third: In Sec. 2, 18 V.S.A. § 1512, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c)(1) Beginning July 1, 2012, no person or entity shall manufacture, sell, or distribute in commerce in this state any infant formula or baby food stored in a plastic container or jar that contains bisphenol A.

(2) Beginning July 1, 2014, no person or entity shall manufacture, sell, or distribute in commerce in this state any infant formula or baby food stored in a can that contains bisphenol A.

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. Pending the question, Shall the bill be amended as recommended by the Committee on Health and Welfare?, on motion of Senator Racine, action on the bill was postponed until the next legislative day.

Third Reading Ordered

S. 262.

Senator Carris, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to insurance coverage for autism diagnosis and treatment.

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) Many individuals with an autism spectrum disorder require lifelong supports at an estimated cost of \$3.2 million per person.

(2) A national survey of parents in 2005–2006 found that:

(A) 31 percent of children with an autism spectrum disorder had unmet needs for specific health care services;

(B) 14 percent of children with an autism spectrum disorder had forgone care;

(C) 31 percent of children with an autism spectrum disorder had difficulty receiving referrals;

(D) 38 percent of families of children with an autism spectrum disorder had financial problems caused by their child's health care;

(E) 35 percent of families of children with an autism spectrum disorder found that they needed additional income to cover their child's medical expenses;

(F) 57 percent of families of children with an autism spectrum disorder had a family member who needed to reduce or stop employment because of the child's condition;

(G) 27 percent of families of children with an autism spectrum disorder spent 10 or more hours per week providing or coordinating the child's care; and

(H) 31 percent of families of children with an autism spectrum disorder had paid at least \$1,000.00 for their child's medical care during the preceding year.

(3) Information gathered through a 2008 online survey indicates similar challenges for families of children with autism spectrum disorders in Vermont, including high rates of stress, depression, economic hardship, social isolation, marital difficulties, sibling issues, impacts on extended family relationships, and job loss.

(4) Two studies in other states have documented cost savings associated with early intensive behavioral intervention, predicting savings near or above \$200,000.00 per child over the course of the child's educational career.

(5) Special education information provided to the office of special education in the Vermont department of education in December 2009 included 94 early essential education students (ages three to five years) and 14 family, infant, and toddler children (ages birth to three years). Using the predicted savings from the studies in other states, the projected savings in Vermont if those 108 children received early intensive behavioral intervention would be over \$20 million.

(6) Special education directors currently report spending an average of \$42,500.00 per child per year for students with an autism spectrum disorder, which would total \$765,000.00 per child over 18 years of education.

(7) A 2008 report to the Vermont general assembly estimated that \$57 million was spent within the agency of human services and the department

of education during fiscal year 2007, which the office of the Vermont state auditor found to be a fair estimate of state spending for autism services.

(8) Research strongly indicates that early detection, diagnosis, and treatment of children with autism spectrum disorders result in significant improvements in functioning for a substantial subset of young children, from birth to age eight, who receive intensive, early intervention and treatment. Examples from studies have found:

(A) For a group of children receiving 40 hours per week of intensive, early behavioral intervention for two or more years, 47 percent achieved successful first grade performance, only 40 percent were assigned to special classes, and only 10 percent required continued, ongoing support;

(B) When the children described in subdivision (A) of this subdivision (8) were followed up on at the age of 11 and one-half years, only one child who had been in the 47 percent successful group in the first grade required more support; others were indistinguishable from their peers; and

(C) For a group of children in a separate study who received an average of 38 hours per week of intensive, early behavioral intervention for two years, 48 percent succeeded in regular first and second grade classes, demonstrated generally average academic abilities, spoke fluently, and had peers with whom they played regularly.

Sec. 2. STUDY OF COVERAGE OF APPROPRIATE SERVICES FOR CHILDREN WITH AUTISM SPECTRUM DISORDERS

(a) The department of banking, insurance, securities, and health care administration shall convene a work group to consider insurance coverage and other treatment options for children diagnosed with an autism spectrum disorder. The work group shall comprise:

(1) the commissioner of banking, insurance, securities, and health care administration or designee;

(2) the commissioner of health or designee;

(3) the commissioner of education or designee;

(4) the commissioner of mental health or designee;

(5) the commissioner for children and families or designee;

(6) the commissioner of disabilities, aging, and independent living or designee;

(7) one member of the autism task force;

(8) three parents of children with autism spectrum disorders, to be appointed by groups representing families of children with autism spectrum disorders, including:

(A) one parent of a child under the age of six;

(B) one parent of a child between the ages of six and 21; and

(C) one parent of an adult child;

(9) one provider of services to individuals with autism spectrum disorders, to be appointed by the Vermont interagency autism spectrum disorders planning advisory committee; and

(10) one representative from each of the three largest health insurers doing business in Vermont.

(b) The work group shall propose options, using insurance coverage, other means, or a combination thereof, to ensure that children who are diagnosed with an autism spectrum disorder receive the services they need at the earliest appropriate age. The work group shall identify the pros and cons and a cost estimate for each option and shall provide its recommendation to the senate committees on finance, on health and welfare, and on education and the house committees on human services, on health care, and on education by January 15, 2011.

And that the title of the bill be amended as follows:

“An act relating to a study of coverage of appropriate services for children with autism spectrum disorders.”

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.

Consideration Resumed; Third Reading Ordered

S. 279.

Consideration was resumed on Senate bill entitled:

An act relating to nonunanimous jury verdicts in civil actions.

Thereupon, the pending question, Shall the bill be amended as recommended by Senator Campbell, on behalf of the Committee on Judiciary?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Bill Amended; Third Reading Ordered**S. 285.**

Senator Kittell, for the Committee on Agriculture, to which was referred Senate bill entitled:

An act relating to authorizing a health insurance purchasing association for farmers.

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

Sec. 1. PROMOTING HEALTH CARE COVERAGE OPTIONS FOR FARMERS

(a) In order to ensure access to affordable health care options for farmers, the agency of agriculture, food and markets, the department of banking, insurance, securities, and health care administration, and the office of Vermont health access shall develop information about the available health coverage options for farmers, including Catamount Health with assistance, the Vermont Health Access Plan, and health insurance plans available through an association. The information shall include a specific list of associations that a farmer may join, which also provide health insurance.

(b) Within 45 days from passage of this act, the agency of agriculture, food and markets shall provide information on health insurance options for farmers on its website in a prominent location, which may be through a link to the department of banking, insurance, securities, and health care administration's website.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

And that the title of the bill be amended as follows:

“An act relating to promoting health care coverage for farmers.”

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.

Consideration Postponed

Senate committee bill entitled:

S. 293.

An act relating to state standards for boilers and pressure vessels.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43. Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Senate committee bill entitled:

S. 294.

An act relating to identification in electioneering communications and penalties for campaign finance violations.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Senator Mazza Assumes the Chair

Senator Campbell Assumes the Chair

Third Readings Ordered

S. 295.

Senate committee bill entitled:

An act relating to the creation of an agricultural development director.

Having appeared on the Calendar for notice for one day, was taken up.

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

S. 296.

Senate committee bill entitled:

An act relating to sale or lease of the John H. Boylan state airport.

Having appeared on the Calendar for notice for one day, was taken up.

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

Senator Shumlin Assumes the Chair

S. 297.

Senate committee bill entitled:

An act relating to miscellaneous changes to education law.

Having appeared on the Calendar for notice for one day, was taken up.

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

Bill Amended; Third Reading Ordered

S. 264.

Senator Giard, for the Committee on Agriculture, to which was referred Senate bill entitled:

An act relating to the Vermont dairy industry stabilization and health (DISH) program.

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

Sec. 1. PURPOSE

(a) Sec. 4 of No. 50 of the Acts of 2007 directed that the “Vermont milk commission shall establish by rule . . . a minimum producer price that is designed to achieve a price by which the cost of picking up the milk and hauling the milk from the farm to the purchaser will be paid by the purchaser.”

(b) Under Sec. 6(c) of Act 50 (2007), the milk commission was directed to “commence the rulemaking process necessary to implement the provisions of Sec. 4 . . . within 60 days of the effective date of the act,” which became effective on May 26, 2007. Also under Sec. 6(c), the rule itself “shall take effect when, by rule, legislation, or other agreement, New York and one other state in the Northeast Marketing Area, Federal Order 1, have accomplished the purpose of this act or on January 15, 2009, whichever comes first.”

(c) Sec. 4 of Act 50 (2007) was amended the following year by Sec. 1. of No. 157 of the Acts of the 2007 Adj. Sess. (2008), which split Sec. 4 into two subsections. Subsection (a) directed the Vermont milk commission to establish “by order . . . a minimum producer price that is designed to reflect the cost of production.” Subsection (b) mandated that “The cost of picking up the milk and hauling the milk from the farm to the purchaser will be paid by the purchaser.” Sec. 6(c) of Act 50 (2007) was also amended to change the date certain for the effective date of the milk commission’s order from January 15, 2009 to July 1, 2010.

(d) Despite the mandate to the Vermont milk commission to adopt an order governing the minimum producer price and stop and hauling charges, no order was ever adopted. Furthermore, legal opinions differ as to the force and effect of the amendments made by Act 157 (2007 Adj. Sess.), and consequently, it remains uncertain whether and when the buyer of cows’ milk, rather than the dairy producer, is responsible for paying dairy hauling costs.

(e) The purpose of this act is to express the general assembly's intent that dairy hauling costs should be paid by the buyer of the cows' milk, rather than the dairy farmer.

Sec. 2. 6 V.S.A. § 2676 is amended to read:

§ 2676. TITLE TO MILK IN TANK TRUCK; COST OF HAULING

(a) When milk is sampled, measured, and transferred from a farm tank to a tank truck, the milk collector shall be deemed to be the agent of the buyer and title to the milk shall be deemed to pass to the buyer at the time of such transfer.

(b)(1) In this section, "hauling costs" means stop charges, hauling charges, fuel surcharges, and any other costs incurred to transport cows' milk from a farm to the buyer.

(2) Notwithstanding subdivision 2925(d) of this title, hauling costs shall be paid by the buyer and shall not be charged back to the selling producer, either directly or indirectly. No additional charges shall be made, and no costs may be shifted from other benefits the producer receives to contravene the purpose of this subsection. No funds shall be transferred away from the producer in paid producer differentials or premiums the producer would receive but for this subsection.

Sec. 3. REGIONAL COLLABORATION ON TRANSITION OF PAYMENT OF HAULING COSTS

(a) The secretary of the agency of agriculture, food and markets shall collaborate with his or her counterparts in states within the Northeast Marketing Area to advocate for a transition within each state, and within the Area, to a legally enforceable framework under which the purchaser pays stop and hauling charges.

(b) The secretary shall provide information and support as is practicable to aid other states in effecting this transition through legislative or administrative enactments at the state level to ensure the contemporaneous adoption of a statewide, mandatory framework, under which a purchaser of cows' milk shall be responsible for the payment of dairy hauling costs.

(c) The secretary shall further collaborate with other northeast states to implement a shift in responsibility for payment of dairy hauling costs through a milk marketing order petition or other means available at the federal level.

(d) Beginning in 2011, on or before January 15 of each year, the secretary shall submit a report to the house and senate committees on agriculture detailing progress made on accomplishing the transition at the state level

within each state in the Northeast Marketing Area, and on progress made on a petition or other means to implement a cost shift in stop and hauling charges at the federal level.

Sec. 4. REPEAL

Sec. 1(b) of No. 157 of the Acts of the 2007 Adj. Sess. (2008) is repealed.

Sec. 5. EFFECTIVE DATE

This bill shall take effect upon passage, except that Sec. 2. (amendment to 6 V.S.A. § 2676, mandating that cost of hauling to be paid by buyer) shall take effect when New York requires, by legislative or administrative enactment of statewide applicability and enforcement, that dairy hauling costs be paid by the purchaser of cows' milk rather than the producer of the milk.

And that the title of the bill be amended to read:

“An act relating to stop and hauling charges.”

And that when so amended the bill ought to pass.

Senator Giard, for the Committee on Finance, to which the bill was referred, reported the same without recommendation.

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

House Proposal of Amendment Concurred

S. 117.

House proposal of amendment to Senate bill entitled:

An act relating to the date of the primary election.

Was taken up.

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

Sec. 1. 17 V.S.A. § 2351 is amended to read:

§ 2351. PRIMARY ELECTION

A primary election shall be held on the ~~second~~ fourth Tuesday of ~~September~~ in August in each even numbered year for the nomination of candidates of major political parties for all offices to be voted for at the succeeding general election, except candidates for president and vice-president of the United States, their electors, and justices of the peace.

Sec. 2. 17 V.S.A. § 2352 is amended to read:

§ 2352. NOMINATION OF CANDIDATES PRIOR TO SPECIAL ELECTION

When the governor or any court, pursuant to law, orders a special election to be held for any of the offices covered by section 2351 of this title, a special primary election shall be held on the Tuesday which falls not less than ~~40~~ 60 days nor more than ~~46~~ 66 days prior to the date set for the special election. The nomination of candidates prior to a special election, including nomination both by primary and by other means, shall be governed by the rules applicable to nomination of candidates prior to the general election, except as may be specifically provided in this chapter. The term "general election", as used in this chapter, shall be deemed to include a special election, unless the context requires a different interpretation.

Sec. 3. 17 V.S.A. § 2353(a) is amended to read:

(a) The name of any person shall be printed upon the primary ballot as a candidate for nomination by any major political party for any office indicated, if petitions containing the requisite number of signatures made by legal voters, in substantially the following form, are filed with the proper official, together with the person's written consent to having his or her name printed on the ballot:

I join in a petition to place on the primary ballot of the party the name of, whose residence is in the (city), (town) of in the county of, for the office of to be voted for on Tuesday, the day of ~~September~~ August, 20; and I certify that I am at the present time a registered voter and am qualified to vote for a candidate for this office.

Sec. 4. 17 V.S.A. § 2356 is amended to read:

§ 2356. TIME FOR FILING PETITIONS

Primary petitions and statements of nomination from minor party candidates and independent candidates shall be filed no sooner than the ~~first Monday in June~~ second Monday in May and not later than 5:00 p.m. on the ~~third Monday of July~~ second Thursday after the first Monday in June preceding the primary election prescribed by section 2351 of this title, and not later than 5:00 p.m. of the ~~42nd~~ 62nd day prior to the day of a special primary election.

Sec. 5. 17 V.S.A. § 2369 is amended to read:

§ 2369. DETERMINING WINNER; TIE VOTES

Persons who receive a plurality of all the votes cast by a party in a primary shall be candidates of that party for the office designated on the ballot. If two or more candidates of the same party are tied for the same office, the choice among those tied shall be determined:

(1) Upon five days' notice and not later than 10 days following the primary election, ~~by the state committee of a party, for a state or congressional office; the senatorial district committee for state senate; the county committee for county office; or the representative district committee for a representative to the general assembly~~ shall meet to nominate a candidate from among the tied candidates.

(2) ~~By run-off election for a county office, for a state senator, or for a representative to the general assembly. The run-off election shall be held on the fourth Tuesday of September and shall be conducted in the same manner as the primary election.~~ The committee chair shall certify the candidate nomination for the general election to the secretary of state within 48 hours of the nomination.

Sec. 6. 17 V.S.A. § 2386 is amended to read:

§ 2386. TIME FOR FILING STATEMENTS

(a) Statements pursuant to this subchapter, except for vacancies created by the death or withdrawal of a candidate after the primary and statements for minor party candidates and independent candidates, shall be filed not ~~more than 60 days~~ earlier than the second Thursday after the first Monday in June before the day of the general election and not later than 5:00 p.m. on the ~~third day~~ Tuesday following the primary election.

(b) In the case of the death or withdrawal of a candidate after the primary election, the party committee shall have seven days from the date of the withdrawal to nominate a candidate. In no event, shall a statement be filed later than ~~40~~ 60 days prior to the election.

Sec. 7. 17 V.S.A. § 2402(d) is amended to read:

(d) A statement of nomination and a completed and signed consent form shall be filed not sooner than the ~~first Monday in June~~ second Thursday after the first Monday in June and not later than the third day after the primary election. No public official receiving nominations shall accept a petition unless a completed and signed consent form is filed at the same time.

Sec. 8. 17 V.S.A. § 2413(a) is amended to read:

(a) The party members in each town, on or before the ~~first Tuesday of September~~ fourth Tuesday of August in each even numbered year, upon the call of the town committee, may meet in caucus and nominate candidates for justice of the peace. The committee shall give notice of the caucus as provided in subsection (d) of this section and the chairman and secretary shall file the statements required in sections 2385 through 2387 of this title.

Sec. 9. 17 V.S.A. § 2479 is amended to read:

§ 2479. MANNER OF DISTRIBUTION

Not later than ~~30~~ 45 days before the election, the secretary of state shall furnish the prepared ballots to the clerk of each town. Ballots shall be sent in securely fastened packages by mail or in some other safe manner, with marks on the outside clearly designating the polling place for which they are intended and the number of ballots enclosed. The town clerk shall store the ballots, except for ballots used as early or absentee voter or sample ballots, in a secure place until the day of the election, at which time the town clerk shall deliver them in sufficient quantities to the presiding officer in each polling place, together with any ballots prepared by the town clerk.

Sec. 10. 17 V.S.A. § 2811 is amended to read:

§ 2811. CAMPAIGN REPORTS; CANDIDATES FOR STATE OFFICE, THE GENERAL ASSEMBLY, POLITICAL COMMITTEES, AND POLITICAL PARTIES

(a) Each candidate for state office, each candidate for the general assembly who has made expenditures or received contributions of \$500.00 or more, and each political committee and each political party required to register under section 2831 of this title shall file with the secretary of state campaign finance reports ~~40 days before the primary election and on the 25th on July 15th and on the 15th~~ of each month thereafter ~~and continuing to the general election and 10 days after the general election~~ until and including December 15th.

(b) At any time, but not later than ~~40 days~~ December 15th following the general election, a candidate for state office and each candidate for the general assembly who has made expenditures or received contributions of \$500.00 or more shall file with the secretary of state a "final report" which lists a complete accounting of all contributions and expenditures, and disposition of surplus, and which shall constitute the termination of his or her campaign activities.

* * *

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

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 17 V.S.A. § 2356 is amended to read:

§ 2356. TIME FOR FILING PETITIONS

Primary petitions and statements of nomination from minor party candidates and independent candidates shall be filed no sooner than the first Monday in June and not later than 5:00 p.m. on the third Monday of July preceding the primary election prescribed by section 2351 of this title, and not later than 5:00 p.m. of the 42nd day prior to the day of a special primary election.

Sec. 2. 17 V.S.A. § 2386(a) is amended to read:

(a) Statements pursuant to this subchapter, except for vacancies created by the death or withdrawal of a candidate after the primary and statements for minor party candidates and independent candidates, shall be filed not more than 60 days before the day of the general election and not later than 5:00 p.m. on the third day following the primary election.

Sec. 3. 17 V.S.A. § 2551 is added to read:

§ 2551. UNIFORMED AND OVERSEAS VOTERS; ABSENTEE BALLOTS

(a) Early voter absentee ballots cast in a general election shall be counted if postmarked by the date of the general election and received on or before the date established by the secretary of state, for each election, that would allow these ballots to be counted in the election within a reasonable period of time after the date of the election and that does not exceed 14 days after the date of the general election.

(b) The secretary of state shall request a waiver pursuant to 42 U.S.C. Section 1973ff-1 for each general election.

Which was disagreed to on a roll call, Yeas 8, Nays 20.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Brock, Doyle, Flory, Illuzzi, Mazza, Mullin, Scott.

Those Senators who voted in the negative were: Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Flanagan, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Nitka, Racine, Sears, *Snelling, White.

Those Senators absent or not voting were: Shumlin (presiding), Starr.

*Senator Snelling explained her vote as follows:

“If it were possible I would prefer to make this change of law in a non-election year.

I appreciate and respect the amendment proposed by the Senator from Franklin. However, based on the evidence presented I remain unconvinced that the State of Vermont could acquire a waiver in these circumstances.”

Thereupon, the pending question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative on a roll call, Yeas 21, Nays 7.

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

Roll Call

Those Senators who voted in the affirmative were: Ayer, Bartlett, *Brock, Campbell, Carris, Choate, Cummings, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, Mazza, Miller, Nitka, Racine, Starr, White.

Those Senators who voted in the negative were: Ashe, Doyle, MacDonald, McCormack, Mullin, Scott, Sears.

Those Senators absent or not voting were: Shumlin (presiding), Snelling.

*Senator Brock explained his vote as follows:

“I support the House proposal of amendment solely to allow the public to have a clear picture of the electoral landscape as of the date of the primary election. I continue to oppose strongly the underlying bill.”

President Assumes the Chair

Proposal of Amendment; Third Reading Ordered

H. 456.

Senator Bartlett, for the Committee on Appropriations, to which was referred House bill entitled:

An act relating to seasonal fuel assistance.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. § 2601 is amended to read:

§ 2601. POLICY AND PURPOSE

(a) It is the purpose of this chapter to secure the safety and health of low income Vermont households by providing needy Vermonters with assistance for the purchase of essential home heating fuel. To further this purpose, application acceptance, processing, and eligibility determination should as much as is practical be coordinated with other economic benefit programs administered by the agency of human services.

(b) This chapter establishes a home heating fuel assistance program in the agency of human services with both a seasonal fuel assistance component ~~for very low income households~~ and a crisis component ~~to supply fuel assistance to low income households in crisis situations.~~

Sec. 2. 33 V.S.A. § 2603 is amended to read:

§ 2603. HOME HEATING FUEL ASSISTANCE FUND

(a) There is created in the state treasury a fund to be known as the home heating fuel assistance fund.

(b) The fund shall consist of the receipts from any taxes dedicated to the fund and such other state funds as may be appropriated to it by the general assembly. ~~Funds from the home heating fuel assistance fund and the federal Low Income Home Energy Assistance Program (LIHEAP).~~ These funds shall be expended by the ~~director~~ secretary of human services or designee in accordance with this chapter, rules adopted pursuant to this chapter, and other relevant federal laws and rules adopted pursuant thereto law.

* * *

(d) The secretary or designee may spend, in anticipation of federal receipts into the home heating fuel assistance fund established under this section, a sum no greater than 75 percent of the federal block grant funds allocated to Vermont for the current federal fiscal year under the Low Income Home Energy Assistance Program (LIHEAP), for the purpose of permitting preseason purchases of fuel and other cost-effective purchasing practices authorized by subsection 2602(c) of this title, in accordance with rules adopted by the secretary.

Sec. 3. 33 V.S.A. § 2604 is amended to read:

§ 2604. ELIGIBLE BENEFICIARIES; REQUIREMENTS

(a) Household income eligibility requirements. The secretary of human services or designee, by rule, shall establish household income ~~and asset~~ eligibility requirements of beneficiaries in the seasonal fuel assistance program including the income ~~and assets~~ of all residents of the household.

~~(1) The income eligibility requirements shall require that households have a net gross household income no greater than 125 185 percent of the federal poverty level in order to be potentially eligible for benefits. Net income shall be derived by making the following deductions from gross income: 20 percent of household members' gross earned income; 100 percent of federal or state earned income credits received by household members; dependent care expenses that are within an allowable maximum, paid by a household member, and necessary to support a household member's employment or training for employment, according to criteria established by the secretary by rule; child support or alimony payments made by a household member on behalf of a nonhousehold member that meet criteria established by the secretary by rule; \$250.00 for each household member who is 60 years of age or older or disabled according to criteria established by the secretary by rule; any deductions or exclusions required by federal law or regulations; and any other deduction or exclusion established by the secretary by rule. To the extent allowed by federal law, the secretary of human services or designee shall establish by rule a calculation of gross income based on the same rules used in 3SquaresVT, except that the secretary or designee shall include additional deductions or exclusions from income required by LIHEAP.~~

~~(2) In order to be eligible, a household shall have net household assets no greater than \$5,000.00, or \$10,000.00 if one member of the household is 60 years of age or older. The secretary shall establish exclusions from the asset limit by rule.~~

(b) Fuel cost requirements. ~~The secretary shall adopt rules that specify the responsibility of the applicant households and their certified fuel supplier in providing the office of home heating fuel assistance with information that the office will use to establish an applicant household's heating fuel consumption for the previous year. The secretary of human services or designee shall by rule procedure establish a table that contains amounts that will function as a proxy for applicant households' annual heating fuel cost for the previous year. The seasonal fuel expenditure estimates contained within such table shall closely approximate the actual home heating costs experienced by participants in the home heating fuel assistance program. Such table shall be revised no~~

less frequently than every three years based on data supplied by certified fuel suppliers, ~~the department of public service, and other industry sources to the office of home heating fuel assistance, as required by rule. The secretary shall also establish by rule minimum amounts of annual home heating fuel costs that vary based on the household's size and annual income.~~

(c) In determining heating fuel costs of households:

~~(1)(A) Households that make undesignated payments for energy for home heat in the form of rent and are not participating in a public, subsidized or Section 8 housing program shall be eligible for an annual home heating fuel assistance benefit in an amount equal to 30 percent of the benefit the household would have received if the household were purchasing energy for home heating fuel directly, or in the amount of \$50.00, whichever amount is greater.~~

~~(B) Households that make undesignated payments for energy for home heat in the form of rent and are participating in a public, subsidized or Section 8 housing program shall be eligible for a nominal annual home heating fuel assistance benefit of \$5.00. This benefit amount is effective beginning with the 1999-2000 program year.~~

~~(C) Residents of the dwelling unit who make reasonable compensation in the form of room rent and who are not members of the same household shall be eligible for an annual home heating fuel assistance benefit in the amount of \$50.00.~~

(2) Residents of housing units subsidized by the federal, state, or local government shall be deemed to have incurred no annual home heating fuel costs, except to the extent required by any federal law or regulation if federal funds are utilized for the home heating fuel assistance program, and with the following additional exception. Housing unit residents who participate in Reach Up under chapter 11 of this title, or who receive Supplemental Security Income/Aid to the Aged, Blind, or Disabled (SSI/AABD), emergency assistance, or general assistance benefits that are used in whole or in part to pay for their housing or utility costs and do not receive other federal, state, or local government assistance targeted specifically to their housing or utility needs shall, with the exception of households for which the cost of heat is supplied by the landlord, be assumed to incur annual home heating fuel costs and their eligibility for annual heating fuel assistance shall not be limited by this subsection.

~~(3)~~(2) The annual heating fuel cost for a household unit shall be only for the cost of the primary heating fuel source of the unit, which may be for wood, electricity, or any other fuel source, but annual heating fuel costs shall be only for the cost of heat and not include the cost of the fuel for any other uses of the household.

Sec. 4. 33 V.S.A. § 2605 is amended to read:

§ 2605. BENEFIT AMOUNTS

~~(a) The secretary shall by rule establish a table that specifies for households for which the cost of heat is not supplied by the landlord, maximum annual home heating fuel assistance benefit amounts. The maximum benefit amounts contained within this table shall vary by household size and annual household income. The annual home heating fuel assistance benefit for households that make undesignated payments for energy for home heat in the form of rent, and for households that pay room rent and who are not members of the same household with other residents of the dwelling unit, shall be the amounts established in section 2604(c)(1) of this title.~~

~~(b)~~ The secretary of human services or designee shall by rule establish a table that specifies maximum percentages of applicant households' annual heating fuel costs, based on the proxy table established pursuant to section 2604(b) of this title, that can be authorized for payment as annual home heating fuel assistance benefits for the following year. The maximum percentages contained within this table shall vary by household size and annual household income. In no instance shall the percentage exceed 90 percent.

(b) The maximum percentages of annual heating fuel costs table established in subsection (a) of this section shall provide proportionally higher benefit percentages to households with a gross income of 154 percent of the federal poverty guidelines or less and proportionally lower benefit percentages to households with a gross income of 155 to 185 percent of the federal poverty guideline.

(c) Annually, based on the number of eligible households that have applied ~~and for which the cost of heat is not supplied by the landlord, these households' individual incomes and individual annual heating fuel cost, based on the proxy table established pursuant to subsection 2604(b) of this title, the number of eligible households that have applied and for which the cost of heat is supplied by the landlord, the cost of benefits for these households, and the amount of funds available in the home heating fuel assistance fund for the purpose of providing annual home heating fuel assistance benefits~~ or are projected to apply, and on the eligibility of households in the benefit categories established in this section, the secretary of human services or designee shall, by procedure, set the payment rate that shall be used to determine the amount of annual home heating fuel assistance for ~~which~~ each eligible household ~~for which the cost of heat is not supplied by the landlord qualifies.~~ In no event shall the payment rate be greater than 100 percent of the maximum percentage established by rule as required by subsection ~~(b)~~(a) of this section.

(d) In the case of a household for which the cost of heat is not supplied by the landlord, the household's annual home heating fuel assistance benefit is the household's annual heating fuel cost ~~for the previous year~~ as defined in section 2604(b) of this title, multiplied by the maximum percentage for that household found in the table established by subsection ~~(b)~~(a) of this section, multiplied by the payment rate established in subsection (c) of this section. ~~In no event, however, shall the benefit paid for these households exceed the maximum benefit for a household of its income and size as established by rule as required in subsection (a) of this section. The annual home heating fuel assistance benefit for households that make undesignated payments for energy for home heat in the form of rent, and for households that pay room rent and who are not members of the same household with other residents of the dwelling unit, shall be the amounts established in subdivision 2604(c)(1) of this title.~~

(e) ~~[Repealed.]~~ Households that make undesignated payments for energy for home heat in the form of rent and that are not participating in a public, subsidized, or Section 8 housing program shall be eligible for an annual home heating fuel assistance benefit in an amount equal to 30 percent of the benefit the household would have received if the household were purchasing energy for home heating fuel directly or in the amount of \$50.00, whichever amount is greater.

(f) Households that make undesignated payments for energy for home heat in the form of rent and are participating in a public, subsidized, or Section 8 housing program shall be eligible for a nominal annual home heating fuel assistance benefit of \$5.00.

(g) Residents of the dwelling unit who make reasonable compensation in the form of room rent and who are not members of the same household shall be eligible for an annual home heating fuel assistance benefit in the amount of \$50.00.

(h) Households receiving benefits from 3SquaresVT whose head of household is not otherwise eligible for a fuel benefit under this section shall be eligible for a nominal annual home heating fuel assistance benefit of \$3.00.

Sec. 5. 33 V.S.A. § 2606 is amended to read:

§ 2606. APPLICATION PERIOD; ASSISTANCE

(a) ~~In order to make a timely determination of benefit levels, there shall be an application period during which all beneficiaries shall apply for home heating fuel assistance for the ensuing heating season. The application period shall be from July 15 through August 31. The secretary of human services or designee may accept applications on an ongoing basis beginning on~~

April 1, 2010. The secretary or designee may establish by rule the procedure for accepting applications and determining eligibility under this subsection.

~~(b) The secretary shall accept applications after the application period has closed, but no later than the last day of February. No qualified applicant shall be penalized through a reduction of benefits for a late-filed application, except that such applicant shall not be entitled to receive benefits for any period prior to the month of application.~~

~~(c) The director of home energy assistance secretary of human services or designee shall supply or contract for staff to carry out application processing process applications and related tasks including assisting households in applying and providing required information, and locating and contacting fuel suppliers certified under section 2607 of this title.~~

~~(d) Notwithstanding subsections (a) and (b) of this section, the secretary may accept applications on an ongoing basis for the 2010-2011 heating season beginning on March 1, 2010 and may establish by rule the procedure for accepting applications and determining eligibility under this subsection. No later than January 15, 2010, the secretary shall provide draft legislation to modify the process for application, eligibility, and calculation and issuance of benefits under the seasonal fuel assistance program using a new eligibility system to the house committee on human services and the senate committee on health and welfare.~~

Sec. 6. 33 V.S.A. § 2607 is amended to read:

§ 2607. PAYMENTS TO FUEL SUPPLIERS

(a) ~~The director~~ secretary of human services or designee shall certify fuel suppliers, excluding firewood and wood pellet suppliers, to be eligible to participate in the home heating fuel assistance program, ~~and beneficiaries.~~ Beneficiaries may obtain assistance for fuel deliveries use their seasonal fuel assistance benefit to obtain home heating fuel or energy only from a fuel supplier certified by the director, except that beneficiaries who heat with firewood or wood pellets may obtain their firewood or wood pellets from any supplier they choose.

(b) Certified fuel suppliers shall agree to conduct reasonable efforts in order to inform and assist beneficiaries in their service areas, maintain records of amounts and costs of all fuel deliveries, send periodic statements to customers receiving home heating fuel assistance informing them of their account's credit or debit balance as of the last statement, deliveries or usage since that statement and the charges for such, payments made or applied, indicating their source, since that statement, and the ending credit or debit balance. Certified fuel suppliers shall also agree to provide the ~~director~~

secretary of human services or designee such information deemed necessary for the efficient administration of the program, including information required to pay beneficiary's benefits to the certified supplier after fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed.

(c) Certified fuel suppliers shall not disclose the beneficiary status of recipients of home heating fuel assistance benefits, the names of recipients, or other information pertaining to recipients to anyone, except for purposes directly connected with administration of the home heating fuel assistance program or when required by law.

~~(d) A supplier of wood fuel may be certified by the director only if the supplier is, in the normal course of business, a supplier of wood fuel; maintains a Social Security number or a federal tax identification number for such business; and provides that number to the director.~~

~~(e)~~ Certified fuel suppliers shall also agree to enter into budget agreements with beneficiaries for annualized monthly payments for fuel supplies provided the beneficiary meets accepted industry credit standards, and shall grant program beneficiaries such cash discounts, preseason delivery savings, automatic fuel delivery agreements, and any other discounts granted to any other heating fuel customer or as the secretary of human services or designee may negotiate with certified fuel suppliers.

~~(f)~~(e) The ~~office of home heating fuel assistance~~ secretary of human services or designee shall provide each certified fuel supplier with a list of the households who are its customers and have been found eligible for annual home heating fuel assistance for the current year, the total amount of annual home heating fuel assistance that has been authorized for each household, and how the total amount has been allocated over the heating season. Each authorized amount shall function as a line of credit for each eligible household. ~~The office of home heating fuel assistance~~ secretary or designee shall disburse authorized home heating fuel assistance benefits to certified fuel suppliers on behalf of eligible households in accordance with the allocation schedule after fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed.

~~(g) In the event that on April 30 of any year a credit balance exists in a certified fuel supplier's account for a household that has received annual home heating fuel assistance during the previous 12 months, that certified fuel supplier is required to pay the amount of this credit balance to the office of home heating fuel assistance no later than May 31 of the same year.~~

~~(h)~~(f) The ~~director~~ secretary of human services or designee shall negotiate with one or more certified fuel suppliers to obtain the most advantageous

pricing and, payment terms, and delivery methods possible for eligible households.

Sec. 7. 33 V.S.A. § 2609 is amended to read:

§ 2609. CRISIS RESERVES

Annually, the secretary of human services or designee shall determine ~~by rule~~ an appropriate amount of funds in the home heating fuel assistance fund to be set aside for expenditure for the crisis ~~reserve~~ fuel assistance component of the home heating fuel program. The secretary or designee shall also adopt rules to define crisis situations for the expenditure of the home heating fuel crisis ~~reserve~~ funds, and to establish the income and asset eligibility requirements of households for receipt of crisis ~~reserve~~ home heating fuel assistance, provided that no household shall be eligible whose gross household income is greater than ~~150~~ 200 percent of the federal poverty level based on the income of all persons residing in the household. To the extent allowed by federal law, the secretary or designee shall establish by rule a calculation of gross income based on the same rules used in 3SquaresVT, except that the secretary or designee shall include additional deductions or exclusions from income required by LIHEAP.

Sec. 8. EXPEDITED RULES

Notwithstanding the provisions of chapter 25 of Title 3, the agency of human services shall adopt rules to implement this act pursuant to the following:

(1) The secretary of human services or designee shall file final proposed rules with the secretary of state and the legislative committee on administrative rules under 3 V.S.A. § 841, after publication in three daily newspapers with the highest average circulation in the state of a notice that lists the rules to be adopted pursuant to this process and a seven-day public comment period following publication.

(2) The secretary of human services or designee shall file final proposed rules with the legislative committee on administrative rules no later than 28 days after the effective date of this act.

(3) The legislative committee on administrative rules shall review, and may approve or object to, the final proposed rules under 3 V.S.A. § 842, except that its action shall be completed no later than 14 days after the final proposed rules are filed with the committee.

(4) The secretary of human services or designee may adopt a properly filed final proposed rule after the passage of 14 days from the date of filing final proposed rules with the legislative committee on administrative rules or

after receiving notice of approval from the committee, provided the secretary or designee:

(A) has not received a notice of objection from the legislative committee on administrative rules; or

(B) after having received a notice of objection from the committee, has responded pursuant to 3 V.S.A. § 842.

(5) Rules adopted under this section shall be effective upon being filed with the secretary of state and shall have the full force and effect of rules adopted pursuant to chapter 25 of Title 3. Rules filed by the secretary of human services or designee with the secretary of state pursuant to this section shall be deemed to be in full compliance with 3 V.S.A. § 843, and shall be accepted by the secretary of state if filed with a certification by the secretary of human services or designee that the rule is required to meet the purposes of this section.

Sec. 9. IMPLEMENTATION

No later than September 1, 2011, the secretary of human services or designee shall implement a payment system to pay fuel benefits to certified fuel suppliers after the fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed.

Sec. 10. EFFECTIVE DATE

This act shall take effect on passage.

And the title shall be amended to read:

“An act relating to fuel assistance.”

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

Third Reading Ordered

H. 598.

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

An act relating to sorting early voter absentee ballots.

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.

Joint Resolution Adopted in Concurrence

J.R.H. 44.

Joint House resolution entitled:

Joint resolution authorizing the Green Mountain Girls' State Program to use the state house on June 23, 2010.

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

Rules Suspended; Bills Messaged

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

S. 64, S. 103, S. 153, S. 171, S. 182, S. 205, S. 263.

Message from the House No. 38

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. 288. An act relating to the Vermont recovery and reinvestment act of 2010.

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

Message from the House No. 39

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. 243. An act relating to the creation of a mentored hunting license.

H. 462. An act relating to encroachments on public waters.

H. 509. An act relating to pollution control measures for Lake Champlain and the other water of the state.

H. 540. An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

H. 590. An act relating to mediation in foreclosure proceedings.

H. 639. An act relating to motor vehicle insurance for volunteer drivers.

H. 680. An act relating to termination of occupancy of farm employee housing.

H. 772. An act relating to alcoholic beverage tastings and other liquor licensing issues.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, March 23, 2010, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 53.

TUESDAY, MARCH 23, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

Pledge of Allegiance

Pages Caitlin Costello and Paul Croizet then led the members of the Senate in the pledge of allegiance.

Bills Referred

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

H. 243.

An act relating to the creation of a mentored hunting license.

To the Committee on Natural Resources and Energy.

H. 462.

An act relating to encroachments on public waters.

To the Committee on Natural Resources and Energy.

H. 509.

An act relating to pollution control measures for Lake Champlain and the other water of the state.

To the Committee on Agriculture.

H. 540.

An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

To the Committee on Transportation.

H. 590.

An act relating to mediation in foreclosure proceedings.

To the Committee on Judiciary.

H. 639.

An act relating to motor vehicle insurance for volunteer drivers.

To the Committee on Finance.

H. 680.

An act relating to termination of occupancy of farm employee housing.

To the Committee on Judiciary.

H. 772.

An act relating to alcoholic beverage tastings and other liquor licensing issues.

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

Joint 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 Shumlin,

J.R.S. 55. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 26, 2010, it be to meet again no later than Tuesday, March 30, 2010.

Action Reconsidered; House Proposal of Amendment Concurred in with Further Proposal of Amendment

S. 117.

Assuring the Chair that she voted with the majority whereby House proposal of amendment was concurred in by the Senate, Senator White moved that the Senate reconsider its action on Senate bill entitled:

An act relating to the date of the primary election.

Which was agreed to.

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

By adding a new Sec. 11 to read:

Sec. 11. EFFECTIVE DATE

This act shall take effect upon passage.

Which was agreed to.

Consideration Resumed; Third Reading Ordered

S. 293.

Consideration was resumed on Senate committee bill entitled:

An act relating to state standards for boilers and pressure vessels.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative.

Consideration Postponed

S. 294.

Senate committee bill entitled:

An act relating to identification in electioneering communications and penalties for campaign finance violations.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, Senator White, on behalf of the Committee on Government Operations, moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 17 V.S.A. § 2806(a) is amended to read:

(a) A person who knowingly and intentionally violates a provision of ~~subchapters 2 through 4~~ subchapter 2, 3, 4, or 8 of this chapter shall be fined not more than \$1,000.00 or imprisoned not more than six months or both. If the person is not a natural person, each individual responsible for knowingly and intentionally authorizing a violation shall be liable under this subsection.

Sec. 2. 17 V.S.A. § 2892 is amended to read:

§ 2892. IDENTIFICATION

All electioneering communications shall contain the name and address of the person, political committee, ~~or campaign, party, or candidate~~ who or which paid for the communication. The communication shall clearly designate the name of the ~~candidate, party, or political committee~~ person, political committee, party, or candidate by or on whose behalf the same is published or broadcast. The identification requirements of this section shall not apply to lapel stickers or buttons, nor shall they apply to electioneering communications made by a single individual acting alone who spends, in a single two-year general election cycle, a cumulative amount of no more than \$150.00 on those electioneering communications.

Sec. 3. 17 V.S.A. § 2892a is added to read:

§ 2892a. SPECIFIC IDENTIFICATION REQUIREMENTS FOR CERTAIN ELECTIONEERING COMMUNICATIONS

A person, political committee, party, or candidate that makes an expenditure for an electioneering communication shall include at the end of any communication which is transmitted through radio or television, in a clearly spoken manner, an audio statement that sets forth the following information: the name of the speaker, the name of the person who paid for the communication, the relationship of the speaker to the person, and a statement that the speaker approves of the content of the communication. For communications using media other than radio or television, the name, mailing address, and Internet address of the person or political committee shall appear prominently such that a reasonable person would clearly understand by whom the expenditure has been made.

Sec.4. 17 V.S.A. § 2893 is amended to read:

§ 2893. NOTICE OF EXPENDITURE

(a) For purposes of this section, “mass media activities” includes television commercials, radio commercials, mass mailings, mass electronic or digital communications, literature drops, newspaper and periodical advertisements,

robotic phone calls, and telephone banks which include the name or likeness of a clearly identified candidate for office.

(b) In addition to any other reports required to be filed under this chapter, a person, political committee, party, or candidate who makes expenditures for any one mass media activity totaling \$500.00 or more within 30 days ~~of~~ before a primary or general election shall, for each activity, file a mass media report by email with the secretary of state and send a copy of the mass media report by e-mail to each candidate whose name or likeness is included in the activity within ~~24~~ 12 hours of the expenditure or activity, whichever occurs first. For the purposes of this section, a person, political committee, party, or candidate shall be treated as having made an expenditure if the person has executed a contract to make the expenditure. The report shall identify the person, political committee, party, or candidate who made the expenditure with the name of the candidate involved in the activity and any other information relating to the expenditure that is required to be disclosed under the provisions of subsections 2803(a) and (b) of this title. If the activity occurs within 30 days before the election and the expenditure was previously reported, an additional report shall be required under this section. Specifically, the person, political committee, party, or candidate shall file a mass media report by email with the secretary of state and send a copy of the mass media report by email to each candidate whose name or likeness is included in the activity within 12 hours of the activity.

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, and, pending the question, Shall the bill be amended as moved by Senator White on behalf of the Committee on Government Operations?, on motion of Senator Shumlin, consideration of the bill was postponed until the next legislative day.

Consideration Postponed

Senate bill entitled:

S. 237.

An act relating to operational standards for salvage yards.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Senate bill entitled:

S. 247.

An act relating to bisphenol A.

Was taken up.

Thereupon, on motion of Senator Sears, consideration of the bill was postponed until March 30, 2010.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 262. An act relating to a study of coverage of appropriate services for children with autism spectrum disorders.

S. 264. An act relating to stop and hauling charges.

S. 279. An act relating to nonunanimous jury verdicts in civil actions.

S. 285. An act relating to promoting health care coverage for farmers.

S. 295. An act relating to the creation of an agricultural development director.

S. 296. An act relating to sale or lease of the John H. Boylan state airport.

S. 297. An act relating to miscellaneous changes to education law.

Bill Passed in Concurrence with Proposal of Amendment**H. 456.**

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

An act relating to seasonal fuel assistance.

Bill Passed in Concurrence

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

H. 598. An act relating to sorting early voter absentee ballots.

Joint Resolution Adopted on the Part of the Senate**J.R.S. 54.**

Joint Senate resolution entitled:

Joint resolution related to the payment of dairy hauling costs.

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

Joint Resolution Adopted in Concurrence

J.R.H. 45.

Joint House resolution entitled:

Joint resolution urging Google Incorporated to give all due consideration to Vermont applicants for selection to participate in the Google Fiber for Communities project.

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

Rules Suspended; Bills Messaged

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

S. 117; S. 262; S. 264; S. 279; S. 285; S. 295; S. 296; S. 297; H. 456; H. 598.

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, is hereby adopted on the part of the Senate:

By Senator Lyons,

S.C.R. 44.

Senate concurrent resolution in memory of Henry P. Albarelli Sr. of Burlington.

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By Representative Klein and others,

By Senators Cummings, Doyle and Scott,

H.C.R. 273.

House concurrent resolution congratulating the 2010 U-32 Raiders Division II championship boys' basketball team.

By Representative Nease and others,

By Senator Bartlett,

H.C.R. 274.

House concurrent resolution congratulating the 2010 Lamoille Union High School Lady Lancers Division II championship girls' basketball team.

By Representatives Cheney and Masland,

By Senator MacDonald,

H.C.R. 275.

House concurrent resolution commemorating the 200th anniversary of the birth of Senator Justin Smith Morrill, the father of America's land-grant colleges.

By Representative Ram and others,

H.C.R. 276.

House concurrent resolution honoring the federal TRIO programs in Vermont.

By Representatives Winters and Davis,

By Senator MacDonald,

H.C.R. 277.

House concurrent resolution congratulating the 2010 Williamstown Blue Devils Division IV championship boys' basketball team.

By Representative Klein and others,

By Senators Cummings, Doyle and Scott,

H.C.R. 278.

House concurrent resolution congratulating the 2010 U-32 Raiders Division II championship girls' ice hockey team.

By Representative Wilson and others,

H.C.R. 279.

House concurrent resolution designating October 16, 2010, as Vermont Pumpkin Carving Day.

By Representative Mrowicki and others,

H.C.R. 280.

House concurrent resolution designating March 25, 2010, as Afterschool Program Day at the state house.

By Representative Savage and others,

By Senators Brock and Kittell,

H.C.R. 281.

House concurrent resolution congratulating the 2010 Missisquoi Valley Union High School Thunderbirds Division II championship boys' ice hockey team.

By Representative Reis and others,

By Senators Choate and Kitchel,

H.C.R. 282.

House concurrent resolution congratulating the 2010 St. Johnsbury Academy Hilltoppers Division I championship girls' basketball team.

By Representatives Komline and Wilson,

By Senators Hartwell and Sears,

H.C.R. 283.

House concurrent resolution in memory of Burr & Burton Academy film and technology teacher Brian Gawlik.

By Representative Frank,

By Senator Racine,

H.C.R. 284.

House concurrent resolution honoring the outstanding efforts of those who care for, educate, and advocate for our young children in Vermont.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eleven o'clock and thirty minutes in the morning.

WEDNESDAY, MARCH 24, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 40

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. 528. An act relating to the illegal cutting, removal, or destruction of forest products.

H. 775. An act relating to technical changes to the records management authority of the Vermont state archives and records administration.

H. 779. An act relating to potable water supply and wastewater system permits.

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

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 273. House concurrent resolution congratulating the 2010 U-32 Raiders Division II championship boys' basketball team.

H.C.R. 274. House concurrent resolution congratulating the 2010 Lamoille Union High School Lady Lancers Division II championship girls' basketball team.

H.C.R. 275. House concurrent resolution commemorating the 200th anniversary of the birth of Senator Justin Smith Morrill, the father of America's land-grant colleges.

H.C.R. 276. House concurrent resolution honoring the federal TRIO programs in Vermont.

H.C.R. 277. House concurrent resolution congratulating the 2010 Williamstown Blue Devils Division IV championship boys' basketball team.

H.C.R. 278. House concurrent resolution congratulating the 2010 U-32 Raiders Division II championship girls' ice hockey team.

H.C.R. 279. House concurrent resolution designating October 16, 2010, as Vermont Pumpkin Carving Day.

H.C.R. 280. House concurrent resolution designating March 25, 2010, as Afterschool Program Day at the state house.

H.C.R. 281. House concurrent resolution congratulating the 2010 Missisquoi Valley Union High School Thunderbirds Division II championship boys' ice hockey team.

H.C.R. 282. House concurrent resolution congratulating the 2010 St. Johnsbury Academy Hilltoppers Division I championship girls' basketball team.

H.C.R. 283. House concurrent resolution in memory of Burr & Burton Academy film and technology teacher Brian Gawlik.

H.C.R. 284. House concurrent resolution honoring the outstanding efforts of those who care for, educate, and advocate for our young children in Vermont.

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. 44. Senate concurrent resolution in memory of Henry P. Albarelli Sr. of Burlington.

And has adopted the same in concurrence.

Bills Referred

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

H. 528.

An act relating to the illegal cutting, removal, or destruction of forest products.

To the Committee on Judiciary.

H. 775.

An act relating to technical changes to the records management authority of the Vermont state archives and records administration.

To the Committee on Government Operations.

H. 779.

An act relating to potable water supply and wastewater system permits.

To the Committee on Natural Resources and Energy.

Joint Resolution Placed on Calendar**J.R.S. 56.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Miller, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, and White,

J.R.S. 56. Joint resolution supporting continuing implementation of the Inter-Rwandan Dialogue.

Whereas, 20 years ago, Ven Dhyani Ywahoo established the Sunray Peace Village in Lincoln, Vermont, and during the past two decades, she has welcomed many interested visitors and peacemakers, and

Whereas, she imparts to her guests, together with other peacemakers such as Vermont-based international mediator Dr. Louise Diamond, the wise values of compassion, justice, peace and reconciliation that Native American elders have long espoused, and

Whereas, among the peacemakers to the Sunray Peace Village have been two Spanish lawyer-mediators, and

Whereas, since 1990, hundreds of thousands of innocent persons residing in the African nation of Rwanda (Rwandans), and representative of that nation's three primary ethnic groups, Hutu, Tutsi and Twa, as well as Congolese from the neighboring Democratic Republic of the Congo, have perished in one of the most deadly interethnic conflicts since World War II, and

Whereas, both the United Nations and the European Parliament have repeatedly declared the existence of important political, economic and strategic interests in Africa's Great Lakes region where Rwanda is located, and

Whereas, the fissures in Rwandan society remain extremely deep, and an extensive restoration of civil harmony is needed in Rwanda and in Africa's entire Great Lakes Region in order for social, cultural, commercial and political life to function with any degree of long-term sustainability, and

Whereas, despite the legal significance of some international judicial proceedings, a true transformation of Rwandan society will require the establishment of new and enduring bonds of acceptance, cooperation and trust among the different Rwandan ethnic, political and social groups, and

Whereas, with this noble goal in mind, the Brussels-based Hutu president of a victims' association and the Rwandan government's Tutsi former plenipotentiary ambassador to the United Nations initiated an interethnic Rwanda dialogue, and

Whereas, in 2004, subsequent to the dialogue's initiation, ten Rwandan men and women, both Tutsi and Hutu, residing outside Rwanda met in Mallorca, Spain, and

Whereas, in 2006, after this first successful meeting and extensive subsequent planning, a second conclave of 20 mixed ethnic Rwandans, both residents of Rwanda and abroad, and now known as the Inter-Rwandan Dialogue, was convened in Barcelona, Spain under the auspices of the 1980 Noble Peace Prize laureate Aldolfo Pérez-Esquivel, and

Whereas, the 2006 Inter-Rwandan Dialogue in Barcelona laid the foundation for the International Network of Truth and Reconciliation in Central Africa, and the resulting protocol of findings led to five additional Dialogue Platforms during 2007 and 2008 that were held in Washington, D.C. (for Rwandans exiled in the United States and Canada); in Amsterdam (for Rwandans exiled in the Netherlands, Belgium and Germany); in Orleans, France (for Rwandans exiled in France and Italy); in Barcelona - The Platform for Rwandan Women (for Rwandan women exiled in seven European countries); and in Kinshasa, Democratic Republic of the Congo, where the plight of Congolese victims, in relation to Rwanda, was the special focus, and

Whereas, in 2009 the Inter-Rwandan Dialogue returned to Mallorca, Spain where the 30 male and female participants included representatives of the seven editions of Dialogue belonging to the Hutu, Tutsi and Twa ethnic groups, and

Whereas, this five-year process has involved former prime ministers, cabinet ministers, ambassadors and political leaders, as well as representatives from civil society, victims' and human rights organizations, and institutions devoted to peace and economic research, and

Whereas, all of these individuals and organizations have focused on the future and continuing this larger Inter-Rwandan Dialogue as the legitimate foundation upon which to build a new Rwanda that all political, ethnic, social, and economic groups in the country, as well as the international community, can widely accept, and

Whereas, the progress that the Inter-Rwandan Dialogue has achieved to date is largely attributable to the enormous leadership of the Spanish mediators who, in their summer of 2009 visit to the Sunray Peace Village, spoke of the centrality of Ven Dhyani Ywahoo's wise values in reducing, and perhaps

ultimately transforming, the extreme animosity that the Hutu, Tutsi and Twa, as well as Congolese from the neighboring Democratic Republic of the Congo, have developed toward each other, and

Whereas, the Inter-Rwandan Dialogue is an exemplary and realistic model for the bringing together of opposing ethnic groups involved in major national and international conflicts, and this unusual and praiseworthy international dialogue should be universally applauded and encouraged, and if possible, this dialogue model should be extended to other countries in conflict, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly supports the implementation of the Inter-Rwandan Dialogue in its development and continuing implementation of the Inter-Rwandan Dialogue that is premised on the teachings of Ven Dhyani Ywahoo of Lincoln, Vermont, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to Ven Dhyani Ywahoo at the Sunray Peace Village in Lincoln, Vermont and to the administrative offices of the Inter-Rwandan Dialogue in Barcelona, Spain.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Consideration Postponed

Senate bill entitled:

S. 294.

An act relating to identification in electioneering communications and penalties for campaign finance violations.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Consideration Resumed; Bill Amended; Third Reading Ordered

S. 237.

Consideration was resumed on Senate bill entitled:

An act relating to operational standards for salvage yards.

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

Thereupon, pending the question, Shall the bill be read the third time? Senator Snelling on behalf of the Committee on Natural Resources and Energy, moved to amend the bill as follows:

First: In Sec. 1, 24 V.S.A. § 2248(a) by striking out subdivisions (4) and (5) in their entirety and inserting in lieu thereof the following:

(4) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 100 feet of a Class I or Class II wetland as those terms are defined in 10 V.S.A. § 902. This subdivision shall not apply to the renewal of a valid certificate of registration under this chapter.

(5)(A) A salvage yard issued a certificate of registration under section 2242 of this title after July 1, 2010, shall not be sited or operated within 300 feet of a potable water supply, as that term is defined in 10 V.S.A. § 1972, unless:

(i) the water supply provides water to the salvage yard; or

(ii) the agency of natural resources approves management practices or remedial measures to prevent contamination of the potable water supply.

(B) This subdivision shall not apply to the renewal of a valid certificate of registration under this chapter.

Second: In Sec. 1, 24 V.S.A. § 2248(b) by adding new subdivisions (1) and (2) to read as follows:

(1) the siting of all salvage yards, including setbacks from surface waters, wetlands, and potable water supplies;

(2) exemptions from the requirement to obtain a certificate of registration under section 2242 of this title;

and by renumbering the subsequent subdivisions of 24 V.S.A. § 2248(b) accordingly

Third: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. 24 V.S.A. § 2241 is amended to read:

§ 2241. DEFINITIONS

For the purposes of this subchapter:

-
- (1) “Abandoned” means a motor vehicle as defined in 23 V.S.A. § 2151.
- (2) “Board” means the state transportation board, or its duly delegated representative.
- (3) “Highway” means any highway as defined in section 1 of Title 19.
- (4) “Interstate or primary highway” means any highway, including access roads, ramps and connecting links, which have been designated by the state with the approval of the Federal Highway Administration, Department of Transportation, as part of the National System of Interstate and Defense Highways, or as a part of the national system of primary highways.
- (5) “Junk” means old or scrap copper, brass, iron, steel, and other old or scrap or nonferrous material, including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash, or any discarded, dismantled, wrecked, scrapped, or ruined motor vehicles or parts thereof.
- (6) “Junk motor vehicle” means a discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered or uninspected for a period of ~~ninety~~ 90 days from the date of discovery.
- (7) “Salvage yard” means any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. “Salvage yard” also means any ~~place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway or navigable water, as that term is defined in section 1422 of Title 10~~ outdoor area used for operation of an automobile graveyard. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.
- (8) “Legislative body” means the city council of a city, the board of selectmen of a town, or the board of trustees of a village.
- (9) “Main traveled way” means the portion of a highway designed for the movement of motor vehicles, shoulders, auxiliary lanes, and roadside picnic, parking, rest, and observation areas and other areas immediately adjacent and contiguous to the traveled portion of the highway and designated by the transportation board as a roadside area for the use of highway users and generally but not necessarily located within the highway right-of-way.
- (10) “Motor vehicle” means any vehicle propelled or drawn by power other than muscular power, including trailers.
- (11) “Notice” means by certified mail with return receipt requested.

(12) “Scrap metal processing facility” means a manufacturing business which purchases sundry types of scrap metal from various sources including the following: industrial plants, fabricators, manufacturing companies, railroads, junkyards, auto wreckers, salvage dealers, building wreckers, and plant dismantlers and sells the scrap metal in wholesale shipments directly to foundries, ductile foundries and steel foundries where the scrap metal is melted down and utilized in their manufacturing process.

(13) “Secretary” means the secretary of natural resources or the secretary’s designee.

(14) “Automobile hobbyist” means a person who is not primarily engaged in the business of:

(A) selling motor vehicles or motor vehicle parts; or

(B) accepting, storing, or dismantling junk motor vehicles.

(15) “Automobile graveyard” means a yard, field, or other outdoor area used or maintained for storing or depositing four or more junk motor vehicles. “Automobile graveyard” does not include:

(A) an area used by an automobile hobbyist to store, organize, restore, or display motor vehicles or parts of such vehicles, provided that the hobbyist’s activities comply with all applicable federal, state, and municipal law;

(B) an area used for the storage of motor vehicles exempt from registration under chapter 7 of Title 23;

(C) an area owned or used by a dealer registered under 23 V.S.A. § 453 for the storage of motor vehicles; or

(D) an area used or maintained for the parking or storage of operational commercial motor vehicles, as that term is defined in 23 V.S.A. § 4103(4), that are temporarily out of service and unregistered but are expected to used in the future by the vehicle operator or owner.

Which was agreed to.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative.

Bill Passed

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

S. 293. An act relating to state standards for boilers and pressure vessels.

Third Readings Ordered**S. 224.**

Senator Snelling, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to the establishment of a paint stewardship program.

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

Sec. 1. 10 V.S.A. chapter 159, subchapter 4 is added to read:

Subchapter 4. Paint Stewardship Program

§ 6671. POLICY

The general assembly finds and declares that it is in the best interest of Vermont to have an environmentally sound, cost-effective paint stewardship program that will undertake responsibility for the development and implementation of strategies to reduce the generation of postconsumer paint, promote the reuse of postconsumer paint, and collect, transport, and process postconsumer paint for end-of-life management, including reuse, recycling, energy recovery, and disposal. The paint stewardship program will follow the waste management hierarchy for managing and reducing leftover paint in the order as follows: reduce consumer generation of leftover paint, reuse, recycle, provide for energy recovery, and dispose. The paint stewardship program will provide more opportunities for consumers to properly manage their leftover paint; provide fiscal relief for local government in managing postconsumer paint; keep paint out of the waste stream; and conserve natural resources.

§ 6672. DEFINITIONS

As used in this subchapter:

(1) “Architectural paint” means interior and exterior architectural coatings sold in containers of five gallons or less and does not mean industrial, original equipment, or specialty coatings.

(2) “Distributor” means a company that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in Vermont.

(3) “Environmentally sound management practices” means policies to be implemented by a producer or a stewardship organization to ensure compliance with all applicable laws and also addressing such issues as adequate record keeping, tracking and documenting the fate of materials within the state and beyond, and adequate environmental liability coverage for

professional services and for the operations of the contractors working on behalf of the producer organization.

(4) “Energy recovery” means recovery in which all or a part of the solid waste materials are processed in order to use the heat content or other forms of energy of or from the material.

(5) “Paint stewardship assessment” means the amount added to the purchase price of architectural paint sold in Vermont necessary to cover the cost of collecting, transporting, and processing the postconsumer paint managed through the statewide program.

(6) “Postconsumer paint” means architectural paint not used and no longer wanted by a purchaser.

(7) “Producer” means a manufacturer of architectural paint who sells, offers for sale, or distributes that paint in Vermont under the producer’s own name or brand.

(8) “Recycling” means any process by which discarded products, components, and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity but does not include energy recovery or energy generation by means of combusting discarded products, components, and by-products with or without other waste products.

(9) “Retailer” means any person that offers architectural paint for sale at retail in Vermont.

(10) “Reuse” means the return of a product into the economic stream for use in the same kind of application as originally intended, without a change in the product’s identity.

(11) “Secretary” means the secretary of natural resources.

(12) “Sell” or “sale” means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogues, or the Internet or any other similar electronic means.

(13) “Stewardship organization” means a corporation, nonprofit organization, or other legal entity created by a producer or group of producers to implement the paint stewardship program required under this subchapter.

§ 6673. PAINT STEWARDSHIP PROGRAM

(a) A producer or a stewardship organization representing producers shall submit a plan for the establishment of a paint stewardship program to the secretary for approval by July 1, 2011. The plan shall address the following:

(1) Describe how the program proposed under the plan will collect, transport, recycle, and process postconsumer paint for end-of-life management, including recycling, energy recovery, and disposal, using environmentally sound management practices.

(2) Describe the program and how it will provide for convenient and available statewide collection of postconsumer architectural paint in urban and rural areas of the state. The producer or stewardship organization shall utilize the existing recycling infrastructure when selecting collection points for postconsumer architectural paint where cost effective.

(3) Provide for collection rates and convenience of collection equal to or greater than the collection programs available to consumers prior to the paint stewardship program.

(4) Provide the facility name, location, and hours of operation of facilities accepting paint for recycling under the program.

(5) Establish goals to reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper end-of-life management of postconsumer paint, as practical based on current household hazardous waste program information. The goals may be revised by the manufacturer or stewardship organization based on the information collected for the annual report.

(6) Describe how postconsumer paint will be managed in the most environmentally and economically sound manner, including following the waste-management hierarchy of source reduction, reuse, recycling, energy recovery, and disposal.

(7) Describe education and outreach efforts to promote the source reduction and recycling of architectural paint for each of the following: consumers, contractors, and retailers.

(b) Beginning no later than July 1, 2012, or three months after approval of the paint stewardship program plan under subsection (a) of this section, a producer of architectural paint sold at retail or a stewardship organization of which a producer is a member shall implement the approved paint stewardship program plan.

(c) A plan submitted under subsection (a) of this section shall include a funding mechanism under which each architectural paint producer remits to a stewardship organization payment of a paint stewardship assessment for each container of architectural paint it sells in this state. The paint stewardship assessment shall be added to the cost of all architectural paint sold to Vermont retailers and distributors, and each Vermont retailer or distributor shall add the

paint stewardship assessment to the purchase price of all architectural paint sold in this state. To ensure that the funding mechanism is equitable and sustainable, a uniform paint stewardship assessment shall be established for all architectural paint sold. The paint stewardship assessment shall be approved by the secretary and shall be sufficient to recover, but not exceed, the costs of the paint stewardship program.

(d) A producer or a stewardship organization of which a producer is a member shall promote a paint stewardship program and provide consumers with educational and informational materials describing collection opportunities for postconsumer paint statewide and promotion of waste prevention, reuse, and recycling. The educational and informational program shall make consumers aware that the funding for the operation of the paint stewardship program has been added to the purchase price of all architectural paint sold in the state.

§ 6674. RETAILER RESPONSIBILITY

(a) A producer or retailer may not sell or offer for sale architectural paint to any person in Vermont unless the producer of a paint brand or a stewardship program of which the producer is a member is implementing an approved paint stewardship program plan as required by section 6673 of this title. A retailer complies with the requirements of this section if, on the date the architectural paint was ordered from the producer or its agent, the producer of the paint brand is listed on the agency of natural resources website as a producer implementing an approved paint stewardship program plan.

(b) At the time of sale to a consumer, a producer, a stewardship organization, or a retailer selling or offering architectural paint for sale shall provide the consumer with information regarding available end-of-life management options for architectural paint collected through the paint stewardship program or a brand of paint being sold under the program.

§ 6675. AGENCY RESPONSIBILITY

(a) The secretary shall review and approve plans, and amendments to plans, describing a producer's or product stewardship organization's paint management program. Approvals under this subsection shall be valid for not more than five years. In approving a plan, in addition to finding all elements required by subsection 6673(a) of this title are adequately addressed, the secretary shall determine that the implementation of the plan will result in reasonably convenient services to consumers, and that reasonable efforts have been taken to control the cost of the program.

(b) A plan may be amended by a producer, a stewardship organization, or by the secretary.

(c) The secretary shall review and approve stewardship fees assessed by a producer pursuant to subsection 6673(c) of this title. Approvals under this subsection shall be valid for not more than one year. In approving a stewardship fee, the secretary shall determine that the fee is reasonable and the fee does not exceed the costs of implementing an approved plan. In no case shall the secretary approve a stewardship fee greater than \$0.75 per gallon without further justification of the necessity for a higher fee.

(d) Facilities solely collecting paint for the paint stewardship program that would not otherwise be subject to solid waste certification requirements shall not be required to obtain a solid waste certification. Persons solely transporting paint for the paint stewardship program that would not otherwise be subject to solid waste hauler permitting requirements shall not be required to obtain a solid waste hauler's permit.

§ 6676. ANTICOMPETITIVE CONDUCT

A producer or an organization of producers that manages end-of-life management options, including collection, transport, recycling, and processing, of postconsumer paint as required by this subchapter may engage in anticompetitive conduct to the extent necessary to implement the plan approved by the secretary and is immune from liability for the conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

§ 6677. PRODUCER REPORTING REQUIREMENTS

No later than July 1, 2013, and annually thereafter, a producer or a stewardship program of which the producer is a member shall submit to the secretary a report describing the paint stewardship program that the producer or stewardship program is implementing as required by section 6673 of this title. At a minimum, the report shall include:

(1) a description of the methods the producer or stewardship program used to reduce, reuse, collect, transport, recycle, and process postconsumer paint statewide in Vermont;

(2) the volume and type of postconsumer paint collected by the producer or stewardship program in all regions of Vermont;

(3) the volume of postconsumer paint collected by the producer or stewardship program in Vermont by method of disposition, including reuse, recycling, energy recovery, and disposal;

(4) The total volume of architectural paint sold in this state during the preceding calendar year under the stewardship program;

(5) an independent financial audit of the paint stewardship program implemented by the producer or the stewardship program; and

(6) samples of the educational materials that the producer or stewardship program provided to consumers of architectural paint.

§ 6678. CONFIDENTIAL BUSINESS INFORMATION

Data reported to the secretary by a producer or stewardship organization under this subchapter shall be deemed to be confidential business information that is exempt from public disclosure, provided that the agency may use and disclose such information in summary or aggregated form that does not directly or indirectly identify individual producers, distributors, or retailers. The agency may require, as a part of the report submitted under section 6677 of this title that the manufacturer or stewardship organization provide a report that does not contain confidential business information and is available for public inspection and review.

§ 6679. RULEMAKING; PROCEDURE

The secretary may adopt rules or procedures to implement the requirements of this subchapter.

Sec. 2. 3 V.S.A. § 2822(j)(29) is added to read:

(29) For review of plans required by 10 V.S.A. § 6673: \$15,000.00.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

And that when so amended the bill ought to pass.

Senator McCormack, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment was agreed to, and third reading of the bill was ordered on a roll call, Yeas 26, Nays 2.

Senator Flanagan 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, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Brock, Mullin.

Those Senators absent or not voting were: Miller, Shumlin (presiding).

Recess

On motion of Senator Mazza the Senate recessed until 1:00 P.M.

Called to Order

At 1:10 P.M. the Senate was called to order by the President *pro tempore*.

Message from the House No. 41

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. 55. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

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

S. 77. An act relating to the disposal of electronic waste.

And has concurred therein.

The Governor has informed the House that on the March 19, 2010, he approved and signed a bill originating in the House of the following title:

H. 517. An act relating to approval of an amendment to the charter of the Village of Enosburg Falls.

Consideration Postponed

Senate bill entitled:

S. 226.

An act relating to medical marijuana dispensaries.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Third Reading Ordered**S. 239.**

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

Reported recommending that the bill be amended by striking out Secs. 2 and 3 in their entirety and inserting in lieu thereof new Secs. 2 and 3 to read as follows:

Sec. 2. 10 V.S.A. § 584 is added to read:

§ 584. INEFFICIENT OUTDOOR WOOD-FIRED BOILER CHANGE-OUT PROGRAM; RETIREMENT

(a) At the earliest feasible date, the secretary shall create and put into effect a change-out program within the air pollution control division of the department of environmental conservation to purchase the retirement of inefficient, high emission outdoor wood-fired boilers (OWB) that will be replaced with OWBs or other heating appliances with substantially lower emissions and higher fuel efficiency.

(b) The secretary shall fund this program using at least \$500,000.00 of the funds available to the state of Vermont for environmental mitigation projects under the consent decree approved on or about October 9, 2007 in the case of *United States, et al. v. American Elec. Power Service Corp., et al.*, Civil Actions No. C2-99-1182, C2-99-1250, C2-04-1098, C2-05-360 (the AEP consent decree). The secretary may add to this funding such additional moneys as may be appropriated to the program authorized under this section or otherwise may be available by grant, contribution, or donation.

(c) The secretary shall take all steps necessary to secure use of the funds from the AEP consent decree in the manner described in subsection (a) of this section.

(d)(1) To be eligible for the program under this section, an OWB shall be one that is not certified under the air pollution control regulations as meeting either the Phase I emission limit for particulate matter of 0.44 pounds per million British thermal units (BTUs) of heat input or the Phase II emission limit for particulate matter of 0.32 pounds per million BTUs of heat output.

(2) The secretary may develop program eligibility criteria that are in addition to the criteria of subdivision (1) of this subsection. Such additional criteria may allow an OWB to be eligible for the program under this section

even if the OWB does not meet the requirements of subdivision (1) of this subsection. In developing these additional criteria, the secretary shall consult with affected persons and entities such as the American Lung Association.

(e) An eligible OWB that is accepted into the change-out program under this section shall be:

(1) Replaced with an OWB that is certified under the air pollution control regulations as a Phase II OWB with a particulate matter emission rate of no more than 0.32 pounds per million BTUs of heat output or another type of heating appliance that the secretary determines has an equivalent or more stringent emission rate; and

(2) Retired within a specified period not to exceed six months after acceptance into the program.

(f) In implementing the program required by this section, the secretary:

(1) Shall give priority to replacing eligible OWBs that have resulted in complaints regarding emissions, including particulate matter or smoke, that the agency has determined are valid, and have the highest emission rates, cause nuisance, or are within 200 feet of a residence, school, or health care facility.

(2) May allow replacement of an eligible OWB that is less than the required setback distance from a residence, school, or health care facility that is neither served by the OWB nor owned by the owner or lessee of the OWB with an OWB or heating appliance that is also less than the required setback distance from a residence, school, or health care facility, unless such location of the replacement OWB or heating appliance will cause a nuisance or will not comply with all applicable local ordinances and bylaws. For the purposes of this subdivision (2), "required setback distance" means the setback distance applicable to the OWB that is required by the air pollution control regulations.

(3) May require that an eligible OWB be replaced with a heating appliance that is not an OWB if, based on the secretary's consideration of area topography, air flows, site conditions, and other relevant factors, the secretary determines that the replacement OWB would cause nuisance.

(4) To the extent practical, should provide over time for decreasing emission rates and increasing fuel efficiency requirements for replacement OWBs under this program as new technology for boilers becomes commercially available.

(g) Any OWB in the state that is not certified under the air pollution control regulations to meet the Phase I, Phase II, or a more stringent emission limit shall be retired on or before December 31, 2012, if the OWB is located within 200 feet of a residence, school, or health facility that is neither served by the

OWB nor owned by the owner or lessee of the OWB and has resulted or results in a complaint regarding emissions, including particulate matter or smoke, that the agency has determined is valid.

(h) For the purpose of this section:

(1) “Outdoor wood-fired boiler” or “OWB” means a fuel-burning device designed to burn primarily wood that the manufacturer specifies should or may be installed outdoors or in structures not normally occupied by humans, such as attached or detached garages or sheds, and that heats spaces or water by the distribution through pipes of a fluid heated in the device, typically water or a mixture of water and antifreeze. In addition, this term also means any wood-fired boiler that is actually installed outdoors or in structures not normally occupied by humans, such as attached or detached garages or sheds, regardless of whether such use has been specified by the manufacturer.

(2) “Retire” means to remove an OWB permanently from service, disassemble it into its component parts, and either recycle those parts or dispose of them in accordance with applicable law.

(i) For the purpose of determinations under subdivisions (f)(1) (priority for change-out), (2) (installation of replacement OWB closer than 100 feet) and (3) (non-OWB replacement) of this section, “nuisance” means interference with the ordinary use or enjoyment of property caused by particulate matter, smoke, or other emissions of an OWB that a reasonable person would find disturbing, annoying, or physically uncomfortable. Precedence in time and balancing of harm shall be irrelevant to such determinations. This section shall not affect the burden or elements of proof with respect to a claim of nuisance caused by an OWB brought in a civil court under common law.

(j) The secretary may adopt rules to implement this section.

Sec. 3. EFFECTIVE DATE

This act shall take effect from passage.

And that when so amended the bill ought to pass.

Senator Bartlett, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

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

Consideration Postponed

Senate bills entitled:

S. 280.

An act relating to prohibiting texting while operating on a highway.

S. 288.

An act relating to the Vermont recovery and reinvestment act of 2010.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, March 26, 2010.

FRIDAY, MARCH 26, 2010

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. 42

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. 470. An act relating to restructuring of the judiciary.

H. 709. An act relating to creating a prekindergarten-16 council.

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

Bill Referred to Committee on Appropriations**H. 764.**

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 the state teachers' retirement system of Vermont.

Bills Referred

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

H. 470.

An act relating to restructuring of the judiciary.

To the Committee on Judiciary.

H. 709.

An act relating to creating a prekindergarten–16 council.

To the Committee on Education.

**Message from the Governor
Appointments Referred**

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

Ozarowski, Peter C. of South Burlington - Member of the Parole Board, - from March 17, 2010, to February 28, 2013.

To the Committee on Institutions.

Blair, Susan K. of Colchester - Member of the Parole Board, - from March 17, 2010, to February 28, 2013.

To the Committee on Institutions.

Pettengill, William J. of South Burlington - Member of the Parole Board, - from March 17, 2010, to February 28, 2013.

To the Committee on Institutions.

Rules Suspended; Third Reading Ordered**H. 764.**

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

An act relating to the state teachers' retirement system of Vermont.

Was taken up for immediate consideration.

Senator Brock, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

Senator Bartlett, for the Committee on Appropriations, 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 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, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

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

Bill Referred

S. 280.

House proposal of amendment to Senate bill entitled:

An act relating to prohibiting texting while operating on a highway.

Was taken up.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Shumlin the bill was committed to the Committee on Transportation.

Consideration Postponed

Senate bills entitled:

S. 226.

An act relating to medical marijuana dispensaries.

S. 288.

An act relating to the Vermont recovery and reinvestment act of 2010.

S. 294.

An act relating to identification in electioneering communications and penalties for campaign finance violations.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 224. An act relating to the establishment of a paint stewardship program.

S. 237. An act relating to operational standards for salvage yards.

S. 239. An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

Rules Suspended; Bills Messaged

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

S. 224, S. 237, S. 239.

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, March 30, 2010, at eight o'clock and thirty minutes in the forenoon pursuant to J.R.S. 55.

TUESDAY, MARCH 30, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Brad Keller of South Royalton.

Pledge of Allegiance

Pages Johannah Mitchell and Brian Renfro then led the members of the Senate in the pledge of allegiance.

Message from the House No. 43

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. 527. An act relating to municipal recovery of costs of fire department response.

H. 722. An act relating to notice of security breaches and internet ticket sales.

H. 769. An act relating to the licensing and inspection of plant and tree nurseries.

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

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

S. 117. An act relating to the date of the primary election.

And has concurred therein.

Bills Referred

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

H. 527.

An act relating to municipal recovery of costs of fire department response.

To the Committee on Government Operations.

H. 722.

An act relating to notice of security breaches and internet ticket sales.

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

H. 769.

An act relating to the licensing and inspection of plant and tree nurseries.

To the Committee on Agriculture.

Joint Resolution Placed on Calendar

J.R.S. 57.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By the Committee on Institutions,

J.R.S. 57. Joint resolution authorizing the Commissioner of Forests, Parks and Recreation to proceed with an exchange of rights-of-way in Groton State Forest.

Whereas, 10 V.S.A. § 2606(b) authorizes the Commissioner of Forests, Parks and Recreation to exchange or lease certain lands with the approval of the General Assembly, and

Whereas, the General Assembly considers the following action to be in the best interest of the state, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Commissioner of Forests, Parks and Recreation is authorized to exchange rights-of-way at the intersection of Vermont Route 232 and Boulder Beach Road with the town of Groton in order to allow reconfiguration of the intersection to replace the dangerous “Y” configuration with a “T” intersection, *and be it further*

Resolved: That the Commissioner shall convey a public right-of-way to the town of Groton over a small, triangular parcel of state land located within the “Y” of the current intersection, and that upon construction of the new intersection, the town of Groton shall convey any unneeded rights-of-way along the old “Y” portion of the Boulder Beach Road back to the state, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of Forests, Parks and Recreation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Joint 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 Shumlin,

J.R.S. 58. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 2, 2010, it be to meet again no later than Tuesday, April 6, 2010.

Bill Ordered to Lie

S. 226.

Senate bill entitled:

An act relating to medical marijuana dispensaries.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Government Operations, on motion of Senator Shumlin, the bill was ordered to lie.

Consideration Postponed

Senate bills entitled:

S. 247.

An act relating to bisphenol A.

S. 294.

An act relating to identification in electioneering communications and penalties for campaign finance violations.

S. 288.

An act relating to the Vermont recovery and reinvestment act of 2010.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

Third Readings Ordered

J.R.H. 35.

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

Joint resolution urging Congress not to diminish any aspect of the existing state regulatory authority over the insurance industry or consumer protection policy with respect to national banks.

Reported that the joint resolution ought to be adopted in concurrence.

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

J.R.H. 39.

Senator Hartwell, for the Committee on Finance, to which was referred joint House resolution entitled:

Joint resolution urging Congress not to pursue legislation allowing individuals or small groups to purchase health insurance across state lines or permitting health insurance companies to offer individual or small group health insurance policies to residents of a state if the company is not authorized by that state to offer those policies.

Reported that the joint resolution ought to be adopted in concurrence

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

Joint Resolution Adopted on the Part of the Senate

J.R.S. 56.

Joint Senate resolution entitled:

Joint resolution supporting continuing implementation of the Inter-Rwandan Dialogue.

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

Bill Passed in Concurrence

H. 764.

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

An act relating to the state teachers' retirement system of Vermont.

Third Readings Ordered

H. 461.

Senator Cummings, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to small estates.

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.

H. 600.

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

An act relating to permitted investments by the state treasurer.

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.

Recess

On motion of Senator Shumlin the Senate recessed until 11:30 A.M.

Called to Order

At 11:40 A.M. the Senate was called to order by the President *pro tempore*.

Consideration Postponed**S. 138.**

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

An act relating to credit card fees.

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

Sec. 1. FINDINGS

(a) While credit card use offers benefits to consumers and merchants, including safety of financial information, convenience, and guaranteed payment to merchants, courts have found that Visa and MasterCard and their member banks have major market power.

(b) Electronic payment system networks, such as those incorporated by Visa and MasterCard, set the level of credit and debit card interchange fees charged by their member banks, even though those banks are supposed to be competitors.

(c) Credit and debit card interchange fees inflate the prices consumers pay for goods and services. Competitors should set their own prices and compete on that basis.

(d) Consumers are increasingly using credit and debit card electronic payment systems to purchase goods and services.

(e) In order to provide the desired convenience to consumers, most merchants must agree to accept credit and debit cards.

(f) Some electronic payment system networks market themselves as currency and promote use of their products as though they were a complete substitution for legal tender.

(g) Due to the market power of the two largest electronic payment system networks, merchants do not have negotiating power with regard to the contract for acceptance of credit and debit cards and the cost of the interchange fees for such acceptance.

(h) Merchants are subject to contracts that allow the electronic payment system networks to change the terms without notice, subject merchants to staggering fines, or reinterpret the rules and hold the merchant responsible.

(i) Merchants have expressed interest in working with customers to give customers the types of pricing options they would like but that are currently blocked by the terms or interpretations of unfair contracts necessary to accept credit and debit cards.

(j) Small businesses in Vermont are often treated as consumers. The protections of this bill are intended to apply to consumers as well as to businesses in Vermont.

Sec. 2. 9 V.S.A. chapter 63, subchapter 4 is added to read:

Subchapter 4. Prevention of Credit Card Company Unfair Business Practices
§ 2480o. DEFINITIONS

For purposes of this subchapter:

(1) “Electronic payment system” means an entity that directly or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that route information and data to facilitate transaction authorization, clearance, and settlement, and that merchants are required to access in order to accept a specific brand of general-purpose credit cards, charge cards, debit cards, or stored-value cards as payment for goods and services. Electronic payment system shall not include a national bank.

(2) “Merchant” means a person or entity that, in Vermont:

(A)(i) does business; or

(ii) offers goods or services for sale; and

(B) has a physical presence.

§ 2480p. ELECTRONIC PAYMENT SYSTEMS

(a) With respect to transactions involving Vermont merchants, no electronic payment system may directly or through any agent, processor, or member of the system:

(1) Impose any requirement, condition, penalty, or fine in a contract with a merchant relating to the display of pricing for goods or services for sale by the merchant. This includes a display for a discount to be provided to a consumer for using a form of payment that carries lower fees for the merchant.

(2) Prevent any merchant from setting a minimum or maximum dollar value for its acceptance of a form of payment.

(3) Inhibit the ability of any merchant to decide not to accept the products of an electronic payment system at one of its locations.

(4) Prevent any merchant from deciding not to accept certain products of an electronic payment system based on the fees associated with such products while still accepting other products of that electronic payment system.

(b) With respect to transactions involving Vermont merchants, no electronic payment system may set required, suggested, or default rates for the fees to be charged by any issuer of its payment cards, agent, processor, or member of the system unless such issuer, agent, or processor is the electronic payment system itself and not a separate legal entity.

§ 2480q. PENALTIES

(a) The following penalties shall apply to violations of this subchapter:

(1) Any electronic payment system found to have violated subsection 2480p(a) or (b) of this subchapter shall reimburse all affected merchants for all chargebacks, fees, and fines collected from affected merchants directly or through any agent, processor, or member of the system during the period of time in which the electronic payment system was in violation and be liable for a civil penalty of \$10,000.00 per chargeback, fee, or fine levied in violation of subsection 2480p(a) or (b) of this subchapter.

(2) Any merchant whose rights under this subchapter have been violated may maintain a civil action for damages or equitable relief as provided for in this section, including attorney's fees, if any.

(3) A violation of subsection 2480p(a) or (b) of this subchapter shall be deemed a violation of the Consumer Fraud Act, chapter 63 of this title. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title.

(b) These penalties shall not apply to entities acting exclusively as agents, processors, or members that are not electronic payment systems.

§ 2480r. SEVERABILITY

If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and, to this end, the provisions of this subchapter are severable.

Sec. 3. 13 V.S.A. § 1816 is added to read:

§ 1816. POSSESSION OR USE OF CREDIT CARD SKIMMING DEVICES AND REENCODERS

(a) A person who knowingly, wittingly, and with the intent to defraud possesses a scanning device, or who knowingly, wittingly, and with intent to defraud uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip of a payment card without the permission of the authorized user of the payment card shall be imprisoned not more than 10 years and fined not more than \$10,000.00, or both.

(b) A person who knowingly, wittingly, and with the intent to defraud possesses a reencoder, or who knowingly, wittingly, and with the intent to defraud uses a reencoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur without the permission of the authorized user of the payment card from which the information is being reencoded shall be imprisoned not more than 10 years or fined not more than \$10,000.00, or both.

(c) Any scanning device or reencoder described in subsection (e) of this section allegedly possessed or used in violation of subsection (a) or (b) of this section shall be seized and upon conviction shall be forfeited. Upon forfeiture, any information on the scanning device or reencoder shall be removed permanently.

(d) Any computer, computer system, computer network, or any software or data owned by the defendant which are used during the commission of any public offense described in this section or any computer owned by the defendant which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

(e) For purposes of this section:

(1) "Payment card" means a credit card, debit card, or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.

(2) "Reencoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(3) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store,

temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(f) Nothing in this section shall preclude prosecution under any other provision of law.

Sec. 4. EFFECTIVE DATES

(a) Secs. 1 and 2 of this act shall take effect July 1, 2010.

(b) This section and Sec. 3 of this act shall take effect upon passage.

And that when so amended the bill ought to pass.

Senator Mazza Assumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43. Thereupon, pending the question, Shall the bill be amended as recommended by Committee on Judiciary?, on motion of Senator Shumlin consideration of the bill was postponed until the next legislative day.

Senate Concurrent Resolutions

The following joint concurrent resolutions, 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, are hereby adopted on the part of the Senate:

By Senators Shumlin and White,

By Representative Moran and others,

S.C.R. 45.

Senate concurrent resolution congratulating Kelly Clark on her snowboarding triumphs at the 2010 Winter Olympics and the United States Open.

By Senators Ayer and Giard,

By Representative Jewett and others,

S.C.R. 46.

Senate concurrent resolution honoring Middlebury attorney Peter Langrock on the fiftieth anniversary of his being admitted to the bar.

House Concurrent Resolutions

The following joint concurrent resolutions 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, are hereby adopted in concurrence:

By Representative Donovan and others,

H.C.R. 285.

House concurrent resolution congratulating the Lund Family Center in Burlington on its 120th anniversary.

By Representative Turner,

H.C.R. 286.

House concurrent resolution congratulating the 2010 Green Mountain Glades USA Hockey Tier 1 New England Regional Squirt Division championship ice hockey team.

By Representative Keenan and others,

By Senators Brock and Kittell,

H.C.R. 287.

House concurrent resolution congratulating the 2010 Bellows Free Academy-St. Albans Comets Division I girls' championship ice hockey team.

By Representative Leriche and others,

H.C.R. 288.

House concurrent resolution congratulating the 2010 Hazen Union High School Wildcats Division III championship boys' basketball team.

By Representative Fagan and others,

By Senators Flory, Carris and Mullin,

H.C.R. 289.

House concurrent resolution congratulating the 2010 Rutland High School Raiders girls' alpine ski team on winning a fourth consecutive state championship.

By Representative Fagan and others,

By Senators Flory, Carris and Mullin,

H.C.R. 290.

House concurrent resolution congratulating the 2010 Rutland High School Raiders championship boys' alpine skiing team.

By Representative Myers and others,

H.C.R. 291.

House concurrent resolution congratulating the 2010 Essex High School Hornets girls' indoor track and field championship team.

By Representative Myers and others,

H.C.R. 292.

House concurrent resolution congratulating the 2010 Essex High School Hornets championship gymnastics team.

By Representative Myers and others,

H.C.R. 293.

House concurrent resolution congratulating the 2010 Essex High School Hornets Division I boys' basketball team.

By Representative Myers and others,

H.C.R. 294.

House concurrent resolution congratulating the 2010 Essex High School Hornets Division I cochampionship boys' indoor track team.

By Representative Edwards and others,

By Senators Shumlin and White,

H.C.R. 295.

House concurrent resolution congratulating the Arts Council of Windham County on its 35th anniversary.

By Representative Poirier and others,

By Senators Cummings, Doyle and Scott,

H.C.R. 296.

House concurrent resolution congratulating the 2010 Spaulding High School Crimson Tide Division I championship boys' ice hockey team.

By Representative Potter and others,

By Senators Campbell, Carris, Flory, Mullin and Nitka,

H.C.R. 297.

House concurrent resolution congratulating the 2010 West Rutland High School Golden Horde Division IV girls' basketball championship team.

By Representative Wizowaty and others,

H.C.R. 298.

House concurrent resolution designating March 27, 2010, at 8:30 p.m.–9:30 p.m. (EDT) as Earth Hour.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o'clock in the afternoon on Wednesday, March 31, 2010.

WEDNESDAY, MARCH 31, 2010

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. 44

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. 783. An act relating to miscellaneous tax provisions.

H. 784. An act relating to the state's transportation program.

H. 789. An act making appropriations for the support of government.

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

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 285. House concurrent resolution congratulating the Lund Family Center in Burlington on its 120th anniversary.

H.C.R. 286. House concurrent resolution congratulating the 2010 Green Mountain Glades USA Hockey Tier 1 New England Regional Squirt Division championship ice hockey team.

H.C.R. 287. House concurrent resolution congratulating the 2010 Bellows Free Academy-St. Albans Comets Division I girls' championship ice hockey team.

H.C.R. 288. House concurrent resolution congratulating the 2010 Hazen Union High School Wildcats Division III championship boys' basketball team.

H.C.R. 289. House concurrent resolution congratulating the 2010 Rutland High School Raiders girls' alpine ski team on winning a fourth consecutive state championship.

H.C.R. 290. House concurrent resolution congratulating the 2010 Rutland High School Raiders championship boys' alpine skiing team.

H.C.R. 291. House concurrent resolution congratulating the 2010 Essex High School Hornets girls' indoor track and field championship team.

H.C.R. 292. House concurrent resolution congratulating the 2010 Essex High School Hornets championship gymnastics team.

H.C.R. 293. House concurrent resolution congratulating the 2010 Essex High School Hornets Division I boys' basketball team.

H.C.R. 294. House concurrent resolution congratulating the 2010 Essex High School Hornets Division I cochampionship boys' indoor track team.

H.C.R. 295. House concurrent resolution congratulating the Arts Council of Windham County on its 35th anniversary.

H.C.R. 296. House concurrent resolution congratulating the 2010 Spaulding High School Crimson Tide Division I championship boys' ice hockey team.

H.C.R. 297. House concurrent resolution congratulating the 2010 West Rutland High School Golden Horde Division IV girls' basketball championship team.

H.C.R. 298. House concurrent resolution designating March 27, 2010, at 8:30 p.m.–9:30 p.m. (EDT) as Earth Hour.

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

The House has considered concurrent resolutions originating in the Senate of the following titles:

S.C.R. 45. Senate concurrent resolution congratulating Kelly Clark on her snowboarding triumphs at the 2010 Winter Olympics and the United States Open.

S.C.R. 46. Senate concurrent resolution honoring Middlebury attorney Peter Langrock on the 50th anniversary of his being admitted to the bar.

And has adopted the same in concurrence.

Bills Referred

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

H. 783.

An act relating to miscellaneous tax provisions.

To the Committee on Finance.

H. 784.

An act relating to the state's transportation program.

To the Committee on Transportation.

H. 789.

An act making appropriations for the support of government.

To the Committee on Appropriations.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed**H. 498.**

On motion of Senator Sears, the rules were suspended, and H. 498 was taken up for immediate consideration, for the purpose of relieving the Committee on Judiciary from further consideration of the bill. Thereupon, on motion of Senator Sears, the Committee on Judiciary was relieved of House bill entitled:

An act relating to maintenance of private roads,
and the bill was committed to the Committee on Transportation.

Bills Passed in Concurrence

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

H. 461. An act relating to small estates.

H. 600. An act relating to permitted investments by the state treasurer.

Joint Resolutions Adopted in Concurrence

Joint House resolutions entitled:

J.R.H. 35. Joint resolution urging Congress not to diminish any aspect of the existing state regulatory authority over the insurance industry or consumer protection policy with respect to national banks.

J.R.H. 39. Joint resolution urging Congress not to pursue legislation allowing individuals or small groups to purchase health insurance across state lines or permitting health insurance companies to offer individual or small group health insurance policies to residents of a state if the company is not authorized by that state to offer those policies.

Having been placed on the Calendar for action, were taken up.

Thereupon, the resolutions were severally adopted in concurrence.

Joint Resolution Adopted on the Part of the Senate

J.R.S. 57.

Joint Senate resolution entitled:

Joint resolution relating to authorizing the commissioner of forests, parks and recreation to proceed with an exchange of rights-of-way in Groton state forest.

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

Consideration Postponed

Senate bill entitled:

S. 294.

An act relating to identification in electioneering communications and penalties for campaign finance violations.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Consideration Resumed; Bill Amended; Third Reading Ordered

S. 138.

Consideration was resumed on Senate bill entitled:

An act relating to credit card fees.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Judiciary?, Senator Campbell, on behalf of the Committee on Judiciary, requested and was granted leave to withdraw the recommendation of amendment. Thereupon, pending the question, Shall the bill be read a third time?, Senator Campbell, on behalf of the Committee on Judiciary, moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

(a) While credit card use offers benefits to consumers and merchants, including safety of financial information, convenience, and guaranteed payment to merchants, courts have found that Visa and MasterCard and their member banks have major market power.

(b) Electronic payment system networks, such as those incorporated by Visa and MasterCard, set the level of credit and debit card interchange fees charged by their member banks, even though those banks are supposed to be competitors.

(c) Credit and debit card interchange fees inflate the prices consumers pay for goods and services. Competitors should set their own prices and compete on that basis.

(d) Consumers are increasingly using credit and debit card electronic payment systems to purchase goods and services.

(e) In order to provide the desired convenience to consumers, most merchants must agree to accept credit and debit cards.

(f) Some electronic payment system networks market themselves as currency and promote use of their products as though they were a complete substitution for legal tender.

(g) Due to the market power of the two largest electronic payment system networks, merchants do not have negotiating power with regard to the contract for acceptance of credit and debit cards and the cost of the interchange fees for such acceptance.

(h) Merchants are subject to contracts that allow the electronic payment system networks to change the terms without notice, subject merchants to staggering fines, or reinterpret the rules and hold the merchant responsible.

(i) Merchants have expressed interest in working with customers to give customers the types of pricing options they would like but that are currently blocked by the terms or interpretations of unfair contracts necessary to accept credit and debit cards.

(j) Small businesses in Vermont are often treated as consumers. The protections of this bill are intended to apply to consumers as well as to businesses in Vermont.

Sec. 2. 9 V.S.A. chapter 63, subchapter 4 is added to read:

Subchapter 4. Prevention of Credit Card Company Unfair Business Practices

§ 2480o. DEFINITIONS

For purposes of this subchapter:

(1) “Electronic payment system” means an entity that directly or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that route information and data to facilitate transaction authorization, clearance, and settlement, and that merchants are required to access in order to accept a specific brand of general-purpose credit cards, charge cards, debit cards, or stored-value cards as payment for goods and services.

(2) “Merchant” means a person or entity that, in Vermont:

(A)(i) does business; or

(ii) offers goods or services for sale; and

(B) has a physical presence.

§ 2480p. ELECTRONIC PAYMENT SYSTEMS

(a) With respect to transactions involving Vermont merchants, no electronic payment system may directly or through any agent, processor, or member of the system:

(1) Impose any requirement, condition, penalty, or fine in a contract with a merchant relating to the display of pricing for goods or services for sale by the merchant. This includes a display for a discount to be provided to a consumer for using a form of payment that carries lower fees for the merchant.

(2) Prevent any merchant from setting a minimum or maximum dollar value for its acceptance of a form of payment.

(3) Inhibit the ability of any merchant to decide not to accept the products of an electronic payment system at one of its locations.

(b) On or before December 15, 2011, the department of banking, insurance, securities, and health care administration shall report to the senate committee on judiciary the possible economic impacts on Vermont banks, credit unions, merchants, and consumers of prohibiting electronic payment systems from setting required, suggested, or default rates for the fees to be charged by any issuer of its payment cards, agent, processor, or member of the system unless such issuer, agent, or processor is the electronic payment system itself and not a separate legal entity.

§ 2480q. PENALTIES

(a) The following penalties shall apply to violations of this subchapter:

(1) Any electronic payment system found to have violated subsection 2480p(a) or (b) of this subchapter shall reimburse all affected merchants for all chargebacks, fees, and fines collected from affected merchants directly or through any agent, processor, or member of the system during the period of time in which the electronic payment system was in violation and be liable for a civil penalty of \$10,000.00 per chargeback, fee, or fine levied in violation of subsection 2480p(a) or (b) of this subchapter.

(2) Any merchant whose rights under this subchapter have been violated may maintain a civil action for damages or equitable relief as provided for in this section, including attorney's fees, if any.

(3) A violation of subsection 2480p(a) or (b) of this subchapter shall be deemed a violation of the Consumer Fraud Act, chapter 63 of this title. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title.

(b) These penalties shall not apply to entities acting exclusively as agents, processors, or members that are not electronic payment systems.

§ 2480r. SEVERABILITY

If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and, to this end, the provisions of this subchapter are severable.

Sec. 3. 13 V.S.A. § 1816 is added to read:

§ 1816. POSSESSION OR USE OF CREDIT CARD SKIMMING DEVICES AND REENCODERS

(a) A person who knowingly, wittingly, and with the intent to defraud possesses a scanning device, or who knowingly, wittingly, and with intent to defraud uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip of a payment card without the permission of the authorized user of the payment card shall be imprisoned not more than 10 years and fined not more than \$10,000.00, or both.

(b) A person who knowingly, wittingly, and with the intent to defraud possesses a reencoder, or who knowingly, wittingly, and with the intent to

defraud uses a reencoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur without the permission of the authorized user of the payment card from which the information is being reencoded shall be imprisoned not more than 10 years or fined not more than \$10,000.00, or both.

(c) Any scanning device or reencoder described in subsection (e) of this section allegedly possessed or used in violation of subsection (a) or (b) of this section shall be seized and upon conviction shall be forfeited. Upon forfeiture, any information on the scanning device or reencoder shall be removed permanently.

(d) Any computer, computer system, computer network, or any software or data owned by the defendant which are used during the commission of any public offense described in this section or any computer owned by the defendant which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

(e) For purposes of this section:

(1) "Payment card" means a credit card, debit card, or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.

(2) "Reencoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(3) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(f) Nothing in this section shall preclude prosecution under any other provision of law.

Sec. 4. EFFECTIVE DATES

(a) Secs. 1 and 2 of this act shall take effect July 1, 2010.

(b) This section and Sec. 3 of this act shall take effect upon passage.

Which was agreed to.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative on a roll call, Yeas 30, 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, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, April 2, 2010.

FRIDAY, APRIL 2, 2010

The Senate was called to order by the President.

Devotional Exercises

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

Pages Honored

In appreciation of their many services to the members of the General Assembly, the President recognized the following-named pages who are completing their services today and presented them with commemorative posters:

Caitlin Costello of Burlington
Paul Croizet of Westfield
Brandon Garbacik of South Barre
Jasmine Jones of Northfield
Johannah Mitchell of Burlington
Brian Renfro of Hartland
Zivah Solomon of Worcester
Tanner Starr of North Troy
Louise Weed of Putney
Shelli Young of St. Albans