

Journal of the Senate

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 by 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 by 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 Natural Resources and Energy, 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. 3, 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 bills 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.

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 recommendations of amendment were collectively 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 an 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 an apprentice hunting license.
- H. 462.** An act relating to encroachments on public waters.
- H. 509.** An act relating to pollution control measures for Lake Champlain.
- 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.