

Journal of the House

Tuesday, March 24, 2009

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Marjorie Ryerson, teacher, journalist, photographer and poet from Randolph, VT.

Pledge of Allegiance

Vermont Center for the Deaf, Williston, VT, led the House in the Pledge of Allegiance.

Message from the Senate No. 24

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

Pursuant to the request of the House for a Committee of Conference on the disagreeing votes of the two Houses on the following House bill the President pro tempore announced the appointment as members of such Committee on the part of the Senate:

H. 232. An act relating to fiscal year 2009 budget adjustment.

Senator Bartlett
Senator Kitchel
Senator Snelling

The Governor has informed the Senate that on March 4, 2009, he approved and signed a bill originating in the Senate of the following title:

S. 13. An act relating to improving Vermont's sexual abuse response system.

House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

H. 434

By the committee on Agriculture,

436

An act relating to agency of agriculture, food and markets revenues;
Under the rule, placed on the Calendar for notice.

H. 435

By the committee on Human Services,
An act relating to palliative care;
Under the rule, placed on the Calendar for notice.

H. 436

By the committee on Natural Resources and Energy,
An act relating to decommissioning and decommissioning funds of nuclear energy generation plants;
Under the rule, placed on the Calendar for notice.

H. 437

By Reps. Obuchowski of Rockingham, Deen of Westminster, Moran of Wardsboro, Mrowicki of Putney and Partridge of Windham,
An act relating to waiving residency requirements for a student who moves to a new school district in the middle of an academic year;
To the committee on Education.

Bills Referred to Committee on Ways and Means

House bills of the following titles, appearing on the Calendar, affecting the revenue of the state, under the rule, were referred to the Committee on Ways and Means:

H. 93

House bill, entitled
An act relating to leasing state forestland for maple sugar production

H. 171

House bill, entitled
An act relating to home mortgage protection for Vermonters

H. 313

House bill, entitled
An act relating to near-term and long-term economic development

Bills Referred to Committee on Appropriations

House bills of the following titles, appearing on the Calendar, carrying appropriations, under the rule, were referred to the committee on Appropriations:

H. 152

House bill, entitled

An act relating to encouraging biomass energy production

H. 192

House bill, entitled

An act relating to electronic benefit machines for farmers' markets

Message from the Senate No. 25

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bills of the following titles:

S. 2. An act relating to offenders with a mental illness or other functional impairment.

S. 7. An act to prohibit the use of lighted tobacco products in the workplace.

S. 26. An act relating to recovery of profits from crime.

S. 27. An act relating to tastings and sale of wines, fortified wines and spirits.

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

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

H. 166. An act relating to the Vermont Student Assistance Corporation.

And has passed the same in concurrence.

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 24. Joint resolution relating to criminal procedure, the sex offender registry, and the Adam Walsh Child Protection and Safety Act of 2006 .

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

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

J.R.H. 13. Joint resolution urging Congress to support the International Violence Against Women Act .

And has adopted the same in concurrence.

The Senate has on its part adopted Senate concurrent resolutions of the following titles:

S.C.R. 14. Senate concurrent resolution congratulating the 2009 Vermont winners of the Prudential Spirit of Community Awards.

S.C.R. 15. Senate concurrent resolution honoring the outstanding public service of Thomas Anderson, U.S. Attorney for the District of Vermont.

The Senate has on its part adopted concurrent resolutions originating in the House of the following titles:

H.C.R. 69. House concurrent resolution congratulating the primary care providers' offices in the Northeastern Vermont Regional Hospital service area that the National Committee for Quality Assurance has designated as patient-centered medical homes.

H.C.R. 70. House concurrent resolution honoring the federal TRIO programs in Vermont.

H.C.R. 71. House concurrent resolution honoring the outstanding work of child care providers in Vermont.

H.C.R. 72. House concurrent resolution congratulating Spectrum Youth and Family Services on its winning the 2009 National Network for Youth Agency of the Year Award.

H.C.R. 73. House concurrent resolution honoring Jayne Barber on her outstanding 28-year coaching career at Bellows Falls Union High School.

H.C.R. 74. House concurrent resolution congratulating University of Vermont basketball player Marqus Blakely on his 1,000th career point and award-winning accomplishments.

H.C.R. 75. House concurrent resolution congratulating the Albert D. Lawton Middle School boys' A-basketball ADL tournament championship team.

H.C.R. 76. House concurrent resolution congratulating the 2009 Springfield Cosmos Division II championship boys' basketball team.

H.C.R. 77. House concurrent resolution congratulating William "Bill"

Collins on answering his 10,000th call for the Bennington Rescue Squad .

H.C.R. 78. House concurrent resolution congratulating the 2009 U-32 High School Raiders Division II championship Nordic ski team.

H.C.R. 79. House concurrent resolution congratulating the Panton General Store on its receipt of a 2009 Vermont Centennial Business Award.

H.C.R. 80. House concurrent resolution congratulating the J.W. & D.E. Ryan plumbing and heating contractors on the receipt of a 2009 Vermont Centennial Business Award.

H.C.R. 81. House concurrent resolution congratulating the 2009 Vergennes Union High School Commodores Division II championship cheerleading team.

H.C.R. 82. House concurrent resolution recognizing the work of the Brattleboro community to combat racial and ethnic intolerance.

**Senate Proposal of Amendment to House
Proposal of Amendment Concurred in**

J.R.S. 22

Joint resolution, entitled

Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges, and one District Judge

The Senate has concurred in the House proposal of amendment with a proposal of amendment as follows:

By striking out the following: “ten o’clock” and inserting in lieu thereof the following: eight o’clock

Which proposal of amendment was considered and concurred in.

Bill Amended; Third Reading Ordered

H. 34

Rep. French of Shrewsbury, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to automated external defibrillators

Reported in favor of its passage when amended as follows:

Sec. 1. 18 V.S.A. § 907 is amended to read:

§ 907. AUTOMATED EXTERNAL DEFIBRILLATORS

(a) As used in this section:

(1) "Automated external defibrillator (AED)" means a medical device approved by the United States Food and Drug Administration, that:

(1)(A) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia;

(2)(B) is capable of determining whether defibrillation should be performed on an individual;

(3)(C) upon determination that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart; and

(4)(D) then, upon action by an operator, delivers an appropriate electrical impulse to the patient's heart to perform defibrillation.

~~(b) No person may operate an AED unless the person has successfully completed a training course in the operation of the AED approved by the American Red Cross, the American Heart Association, or by the department, in cardiopulmonary resuscitation and use of a defibrillator. The department of health may provide periodic training bulletins and other information to persons owning and using the AED. The training course in cardiopulmonary resuscitation (CPR) and in the use of an AED shall be either a course offered by the American Heart Association or the American Red Cross. A person using an AED shall be certain that emergency personnel have been summoned by calling 911. This prohibition and training requirement shall not apply to a health care provider, as defined in section 9432(8) of this title, if the person has received appropriate training in the use of the AED as part of his or her education or training.~~

(c) Any person who owns or leases an AED shall:

~~(1) maintain a relationship with a physician to provide technical assistance and consultation regarding the selection and location of an AED, training of potential operators, protocols for use, and individual case review;~~

~~(2) notify the department and the person's regional ambulance service or first responder service of the existence, location, and type of device ~~if~~ the person possesses; and~~

~~(3)(2) maintain and test the device in accordance with the applicable standards of the manufacturer and any rule adopted by the department.~~

(d)(1) Any person, other than a person defined as a health care provider by section 9432(8) of this title or as emergency medical personnel by section 2651(6) of title 24 acting in the normal course of his or her duties as a health care provider or as emergency medical personnel, who acts in good faith and

~~has complied in all material respects with the requirements of subsections (b) and (c) of this section and who renders emergency care by the use of an AED, acquires an AED, owns a premises on which an AED is located, or provides a training course in the operation of an AED or is a licensed physician providing technical assistance to a person acquiring an AED,~~ shall not be liable for civil damages for that person's acts or omissions unless those acts or omissions were grossly negligent or willful and wanton.

(2) This subsection shall not relieve an AED manufacturer, designer, developer, distributor, installer, or supplier of any liability under any applicable statute or rule of law.

(e) This section shall not be construed to create a duty to act under section 519 of Title 12 for any person.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Judiciary agreed to and third reading ordered.

Rep. Copeland-Hanzas of Bradford in Chair.

Bill Amended; Third Reading Ordered

H. 287

Rep. Wilson of Manchester, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

An act relating to Uniform Prudent Management of Institutional Funds Act

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REPEAL

Chapter 119 of Title 14 (Uniform Management of Institutional Funds Act) is repealed.

Sec. 2. 14 V.S.A. chapter 120 is added to read:

CHAPTER 120. UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

§ 3411. SHORT TITLE

This chapter may be cited as the Uniform Prudent Management of Institutional Funds Act.

§ 3412. DEFINITIONSIn this chapter:

(1) “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) “Endowment fund” means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) “Gift instrument” means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) “Institution” means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) “Institutional fund” means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) program-related assets;

(B) a fund held for an institution by a trustee that is not an institution;
or

(C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) “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.

(7) “Program-related asset” means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) “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.

§ 3413. STANDARD OF CONDUCT IN MANAGING AND INVESTING INSTITUTIONAL FUND

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

§ 3414. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In

making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
- (2) the purposes of the institution and the endowment fund;
- (3) general economic conditions;
- (4) the possible effect of inflation or deflation;
- (5) the expected total return from income and the appreciation of investments;
- (6) other resources of the institution; and
- (7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

- (1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
- (2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

§ 3415. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter.

§ 3416. RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift

instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or in part, if:

(1) the institutional fund subject to the restriction has a total value of less than \$50,000.00;

(2) more than 20 years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

§ 3417. REVIEWING COMPLIANCE

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

§ 3418. APPLICATION TO EXISTING INSTITUTIONAL FUNDS

This chapter applies to institutional funds existing on or established after the effective date of this chapter. As applied to institutional funds existing on the effective date of this chapter, this chapter governs only decisions made or actions taken on or after that date.

§ 3419. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This chapter 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 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

§ 3420. 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.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Commerce and Economic Development agreed to and third reading ordered.

Message from the Senate No. 26

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bills of the following titles:

S. 3. An act relating to prohibiting retaliation for legislative testimony.

S. 18. An act relating to limiting the power of municipalities or deeds to prohibit the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

S. 25. An act relating to the repeal or revision of certain state agency reporting requirements.

S. 69. An act relating to digital campaign finance filings.

S. 85. An act relating to the patient's privilege.

S. 86. An act relating to the administration of trusts.

S. 115. An act relating to civil marriage.

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

The Senate has on its part adopted joint resolutions of the following titles:

J.R.S. 18. Joint resolution relating to prescription drug pricing.

J.R.S. 25. Joint resolution relating to weekend adjournment.

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

Senate Bill Referred

S. 115

Senate bill, entitled

An act relating to civil marriage

Was taken up, read the first time and referred to the committee on Judiciary.

Adjournment

At eleven o'clock in the forenoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at one o'clock in the afternoon.

Concurrent Resolutions Adopted

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

H.C.R. 69

House concurrent resolution congratulating the primary care providers' offices in the Northeastern Vermont Regional Hospital service area that the National Committee for Quality Assurance has designated as patient-centered medical homes;

H.C.R. 70

House concurrent resolution honoring the federal TRIO programs in Vermont;

H.C.R. 71

House concurrent resolution honoring the outstanding work of child care providers in Vermont;

H.C.R. 72

House concurrent resolution congratulating Spectrum Youth and Family Services on its winning the 2009 National Network for Youth Agency of the Year Award;

H.C.R. 73

House concurrent resolution honoring Jayne Barber on her outstanding 28-year coaching career at Bellows Falls Union High School;

H.C.R. 74

House concurrent resolution congratulating University of Vermont basketball player Marqus Blakely on his 1,000th career point and award-winning accomplishments;

H.C.R. 75

House concurrent resolution congratulating the Albert D. Lawton Middle School boys' A-basketball ADL tournament championship team;

H.C.R. 76

House concurrent resolution congratulating the 2009 Springfield Cosmos Division II championship boys' basketball team;

H.C.R. 77

House concurrent resolution congratulating William "Bill" Collins on answering his 10,000th call for the Bennington Rescue Squad ;

H.C.R. 78

House concurrent resolution congratulating the 2009 U-32 High School Raiders Division II championship Nordic ski team;

H.C.R. 79

House concurrent resolution congratulating the Panton General Store on its receipt of a 2009 Vermont Centennial Business Award;

H.C.R. 80

House concurrent resolution congratulating the J.W. & D.E. Ryan plumbing and heating contractors on the receipt of a 2009 Vermont Centennial Business Award;

H.C.R. 81

House concurrent resolution congratulating the 2009 Vergennes Union High School Commodores Division II championship cheerleading team;

H.C.R. 82

House concurrent resolution recognizing the work of the Brattleboro community to combat racial and ethnic intolerance;

S.C.R. 14

Senate concurrent resolution congratulating the 2009 Vermont winners of the Prudential Spirit of Community Awards;

S.C.R. 15

Senate concurrent resolution honoring the outstanding public service of Thomas Anderson, U.S. Attorney for the District of Vermont;

[The full text of the concurrent resolutions appeared in the Senate and House Calendar Addendum on the preceding legislative day and will appear in the Public Acts and Resolves of the 2009, seventieth Biennial session.]