

Journal of the House

Tuesday, February 9, 2010

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

Devotional Exercises

Devotional exercises were conducted by Rev. Michael Augustinowicz of St. Augustine Parish, Montpelier, Vt.

Pledge of Allegiance

Page Clare Salerno of Johnson led the House in the Pledge of Allegiance.

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. 755

Rep. Scheuermann of Stowe introduced a bill, entitled

An act relating to changing the structure of education governance and funding

To the committee on Education.

H. 756

Reps. Sharpe of Bristol, Fisher of Lincoln, Jewett of Ripton and Nuovo of Middlebury introduced a bill, entitled

An act relating to recycled content in plastic packaging

To the committee on Natural Resources and Energy.

H. 757

Rep. Bray of New Haven introduced a bill, entitled

An act relating to medical marijuana dispensaries

To the committee on Human Services.

H. 758

Reps. Savage of Swanton, Clark of Vergennes, Lewis of Derby and McFaun of Barre Town introduced a bill, entitled

An act relating to allowing a state employee, teacher, or municipal employee one opportunity to change the beneficiary indicated on his or her survivorship option

To the committee on Government Operations.

H. 759

Rep. Obuchowski of Rockingham, for the committee on Ways and Means, introduced a bill, entitled

An act relating to executive branch fees

Under the rule, placed on the Calendar for notice tomorrow.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 187

Senate bill, entitled

An act relating to municipal financial audits;

To the committee on Government Operations.

S. 218

Senate bill, entitled

An act relating to voyeurism;

To the committee on Judiciary.

S. 278

Senate bill, entitled

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

To the committee on Commerce and Economic Development.

Joint Resolution Placed on Calendar

J.R.H. 36

Joint resolution urging Congress to create a cleaner and greener standard for heating oil in the Northeast and to extend the federal tax credit for biodiesel fuel

Offered by: Committee on Natural Resources and Energy

Whereas, more than one-half of the homes in Vermont are heated with heating oil, and

Whereas, an ultra-low sulfur standard for heating oil would dramatically cut air emissions while reducing both maintenance costs and consumption, and

Whereas, an ultra-low sulfur fuel standard would allow consumers to utilize more efficient heating oil furnaces and boilers, and

Whereas, heating oil that is blended with up to five percent biodiesel can be used in existing appliances that use heating oil, and

Whereas, an increase in the use of heating oil blended with biodiesel would result in reduced dependence on fossil fuels and foreign oil, and

Whereas, the environmental benefits of ultra-low sulfur diesel and biodiesel blends for space heating are beneficial in reducing both particulate matter and greenhouse gas emissions, and

Whereas, the adoption of a uniform standard for ultra-low sulfur diesel and biodiesel blends in the Northeast region – defined as the group of states consisting of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont – would encourage a market for cleaner and greener heating oil that is more efficient and economical for suppliers and consumers, and

Whereas, the extension of the biodiesel tax credit would increase biodiesel production and allow Vermont farmers to develop the feed stocks and capacity to supply biodiesel to Vermont oil heat retailers, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to: (a) create a uniform heating oil standard for the Northeast states identified in this resolution that requires an ultra-low sulfur distillate fuel blended with up to five percent biodiesel; and

(b) extend the \$1 per gallon biodiesel federal tax credit that expired on December 31, 2009, and be it further

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

Which was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

Bill Withdrawn

H. 385

An act relating to laptops for legislators;

Appearing on the Calendar for Action was taken up and the question, Will the House grant Rep. Atkins of Winooski leave to withdraw the bill? was decided in the affirmative.

Bill Amended; Third Reading Ordered

H. 507

Rep. French of Randolph, for the committee on Human Services, to which had been referred House bill, entitled

An act relating to fostering connections to success in guardianships

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

Sec. 1. 14 V.S.A. § 2664(a) is amended to read:

(a) The family court may establish a permanent guardianship at a permanency planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding pursuant to 33 V.S.A. § ~~5528~~ 5318, or a delinquency proceeding pursuant to 33 V.S.A. § ~~5529~~ 5232. The court shall also issue an order permitting or denying visitation, contact or information with the parent at the same time the order of permanent guardianship is issued. Before issuing an order for permanent guardianship, the court shall find by clear and convincing evidence all of the following:

(1) Neither parent is capable or willing to provide adequate care to the child, requiring that parental rights and responsibilities be awarded to a permanent guardian.

(2) Neither returning the child to the parents nor adoption of the child is ~~reasonably likely during the remainder of the child's minority~~ likely within a reasonable period of time.

(3) The child is at least 12 years old unless the proposed permanent guardian is:

(A) a relative; or

(B) the permanent guardian of one of the child's siblings.

(4) The child has resided with the permanent guardian for at least a year, ~~unless~~ or the permanent guardian is a relative with whom the child has a relationship and with whom the child has resided for at least six months.

(5) A permanent guardianship is in the best interests of the child.

(6) The proposed permanent guardian:

(A)(i) is emotionally, mentally, and physically ~~and financially~~ suitable to become the permanent guardian; and

(ii) is financially suitable, with kinship guardianship assistance provided for in 33 V.S.A. § 4903 if applicable, to become the permanent guardian;

(B) has expressly committed to remain the permanent guardian for the duration of the child's minority; and

(C) has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian including an understanding of any resulting loss of state or federal benefits or other assistance.

Sec. 2. 33 V.S.A. § 4903(7) is added to read:

(7) Providing aid to a child in the permanent guardianship of a relative if the child was in the care and custody of the department and was placed in the home of the relative for at least six months prior to the creation of the guardianship.

Sec. 3. 33 V.S.A. § 4904(b)(2) is amended to read:

(2) The department shall require a youth receiving services under this section to be employed, to participate in a program to promote employment or remove barriers to employment, or to attend an educational or vocational program, and, if the youth is working, require that he or she contribute to the cost of services based on a sliding scale, unless the youth meets the criteria for an exception to the employment and educational or vocational program requirements of this section based on a disability or other good cause. The department shall establish rules for the requirements and exceptions under this subdivision.

Sec. 4. 33 V.S.A. § 4904(c) is amended to read:

(c) The commissioner shall establish by rule a program to provide a range of age-appropriate services for youth to ensure a successful transition to adulthood, including foster care and other services provided under this chapter to children as appropriate, housing assistance, transportation, case management services, assistance with obtaining and retaining health ~~insurance care~~ coverage or employment, and other services. At least twelve months prior to a child attaining his or her 18th birthday, the department shall assist the child in developing a transition plan. When developing the transition plan, the child shall be informed about the range of age-appropriate services and assistance available in applying for or obtaining these services.

Sec. 5. 14 V.S.A. § 2663(c)(2) is amended to read:

(2) If the child has been in the custody of the commissioner ~~of social and rehabilitation services for children and families~~ immediately prior to the creation of the guardianship, the commissioner shall have no further duty of support or care for the child after the establishment of the permanent guardianship unless the family is eligible for kinship guardianship assistance provided for in 33 V.S.A. § 4903 or the commissioner contractually agrees in writing to that support.

* * * Technical Corrections * * *

Sec. 6. 14 V.S.A. § 2666 is amended to read:

§ 2666. MODIFICATION; TERMINATION

(a) A modification or termination of the permanent guardianship may be requested by the permanent guardian, the child if the child is age 14 or older, or the commissioner ~~of social and rehabilitation services for children and families~~. A modification or termination may also be ordered by the probate court on its own initiative.

(b) Where the permanent guardianship is terminated by the probate court order or the death of the permanent guardian, the custody and guardianship of the child shall not revert to the parent, but to the commissioner ~~of social and rehabilitation services for children and families~~ as if the child had been abandoned.

* * *

Sec. 7. 14 V.S.A. § 2667(b) is amended to read:

(b) Upon a showing by affidavit of immediate harm to the child, the probate court may temporarily stay the order of visitation or contact on an ex parte basis until a hearing can be held, or stay the order of permanent guardianship and assign parental rights and responsibilities to the commissioner ~~of social and rehabilitation services for children and families~~.

Sec. 8. 33 V.S.A. § 5307(h) is added to read:

(h) The department shall provide information regarding the legal options for persons to participate in the care and placement of the child or for taking custody of the child and regarding the services and supports, including kinship guardianship assistance, that may be available to those persons.

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

Bill Amended; Third Reading Ordered**H. 517**

Rep. Hubert of Milton, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to approval of an amendment to the charter of the Village of Enosburg Falls

Reported in favor of its passage when amended as follows:

In Sec. 2, 24 V.S.A. App. chapter 129, § 2, in the first sentence, by striking out “from time to time”

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

Action on Bill Postponed**H. 542**

House bill, entitled

An act relating to transfers of mobile homes and rent-to-own transactions

Was taken up and pending the reading of the report of the committee on General, Housing and Military Affairs, on motion of **Rep. South of St. Johnsbury**, action on the bill was postponed until Tuesday, February 16, 2010.

**Senate Proposal of Amendment Concurred in with
A Further Proposal of Amendment; Rules Suspended and the Bill was
Ordered Messaged to the Senate Forthwith****H. 534**

The Senate proposed to the House to amend House bill, entitled

An act relating to fiscal year 2010 budget adjustment

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

Second: By striking out Sec. 46 in its entirety and inserting in lieu thereof a new Sec. 46 to read as follows:

Sec. 46. DELETED

Third: In Sec. 49, by striking out the figure “19,115,745” where it appears twice and inserting in lieu thereof the figure 19,094,794 and by striking out the

figure “16,361,710” and inserting in lieu thereof the figure 16,340,759 and by striking out the figure “3,043,197” and inserting in lieu thereof the figure 3,022,246

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

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

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

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

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

§ 4080f. CATAMOUNT HEALTH

(a) As used in this section:

* * *

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

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

* * *

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

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

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

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

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

Sec. D.104. TRANSFER OF TOBACCO TRUST FUNDS

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

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

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

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

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

Sec. 82. REALLOCATION OF FUNDS

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

(b) Of the funds appropriated in Sec. 219(c) of No. 65 of the Acts of 2007 as amended by Sec. 64 of No. 90 of the Acts of 2008 (DeptID 7110010150), and Sec. 233a(a)(6)(B) of No. 65 of the Acts of 2007 (DeptID 7110890702), and Sec. 220 of No. 215 of the Acts of 2006 as amended by Sec. 361 of No. 65 of the Acts of 2007 (DeptID 7110010170); any amounts in the above

appropriations that are deemed unencumbered through award recapture by the commissioner of finance and management shall be available for municipal planning grants in fiscal year 2010.

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

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

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

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

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

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

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

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

§ 167. PUBLIC FUNDS INVESTIGATION SPECIAL FUND

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

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

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

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

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

Sec. 112a. EMERGENCY HOUSING FUNDING

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

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

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

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

Sec. 112b. VERMONT STATE HOSPITAL; CANTEEN PLAN

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

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

Rep. Heath of Westford moved to concur in the Senate proposal of amendment with a further amendment thereto as follows:

By striking the Fifteenth (emergency housing funding) and Sixteenth (Vermont State Hospital canteen) Senate proposals of amendment.

Rep. Poirier of Barre City asked that the question be divided.

Thereupon, the recommendation of proposal of amendment to strike the Sixteenth recommendation of proposal of amendment was disagreed to on a Division vote. Yeas, 6, Nays, 115, and the recommendation of proposal of amendment to strike the Fifteenth proposal of amendment was agreed to.

On motion of **Rep. Komline of Dorset**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Message from the Senate No. 11

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 bill of the following title:

S. 280. An act relating to prohibiting texting while operating on a highway.

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

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

J.R.S. 48. Joint resolution relating to weekend adjournment.

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

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

S.C.R. 37. Senate concurrent resolution in memory of Joan Wing.

S.C.R. 38. Senate concurrent resolution congratulating Winona Greaves of Montpelier on her 100th birthday.

S.C.R. 39. Senate concurrent resolution in memory of Vermont artist Stephen Huneck of St. Johnsbury.

S.C.R. 40. Senate concurrent resolution honoring Good Beginnings of Central Vermont and its outstanding volunteer support programs for families of newborn and adopted infants.

Adjournment

At eleven o'clock and twenty minutes 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 the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

H.C.R. 230

House concurrent resolution congratulating the 2009 Windsor High School Yellow Jackets Division III championship football team;

H.C.R. 231

House concurrent resolution honoring Tanner Dow for his artistic and literary accomplishments;

H.C.R. 232

House concurrent resolution in memory of Representative Richard Hube of Londonderry;

H.C.R. 233

House concurrent resolution congratulating the Windsor High School Yellow Jackets 2009 Division II field hockey championship team;

H.C.R. 234

House concurrent resolution congratulating the Shelburne Community School Wind Ensemble on its selection as a participant in the 25th annual Walt Disney World's Magic Music Days;

H.C.R. 235

House concurrent resolution congratulating Front Porch Forum, Inc. on its 10th anniversary;

H.C.R. 236

House concurrent resolution honoring Brittany Gilbert for her remarkable humanitarian work in Haiti;

H.C.R. 237

House concurrent resolution congratulating all Vermonters competing for the United States in the 2010 Olympics in British Columbia;

S.C.R. 37

Senate concurrent resolution in memory of Joan Wing;

S.C.R. 38

Senate concurrent resolution congratulating Winona Greaves of Montpelier on her 100th birthday;

S.C.R. 39

Senate concurrent resolution in memory of Vermont artist Stephen Huneck of St. Johnsbury;

S.C.R. 40

Senate concurrent resolution honoring Good Beginnings of Central Vermont and its outstanding volunteer support programs for families of newborn and adopted infants;

[The full text of the concurrent resolutions appeared in the House and Senate Calendar Addendum on the preceding legislative day and will appear in the Public Acts and Resolves of the 2010, seventieth Biennial session.]