

# Journal of the House

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Wednesday, March 17, 2010

At one o'clock in the afternoon the Speaker called the House to order.

## Devotional Exercises

Devotional exercises were conducted by Rev. Mark Pitton of Bethany Church, Montpelier, VT.

## Message from Governor

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

Mr. Speaker:

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

**H. 483 An act relating to approval of the merger of the Village of North Westminster and the Town of Westminster and the Charter of the Town of Westminster**

## Committee Bills Introduced

### H. 781

By the committee on Natural Resources and Energy,

An act relating to renewable energy;

Under the rule, placed on the Calendar for notice.

### H. 782

By the committee on Education,

An act relating to a voluntary school district merger incentive program, supervisory union duties, and other education issues;

Under the rule, placed on the Calendar for notice.

## Joint Resolution Adopted in Concurrence

### J.R.S. 53

By Senator Shumlin,

**J.R.S. 53.** Joint resolution relating to weekend adjournment.

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***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, March 19, 2010, it be to meet again no later than Tuesday, March 23, 2010.

Was taken up read and adopted in concurrence.

**Joint Resolution Adopted****J.R.H. 44**

Joint resolution authorizing the Green Mountain Girls' State Program to use the state house on June 23, 2010

Offered by: Representatives Jewett of Ripton, Ram of Burlington, Andrews of Rutland City, Atkins of Winooski, Bohi of Hartford, Branagan of Georgia, Bray of New Haven, Brennan of Colchester, Burke of Brattleboro, Cheney of Norwich, Clarkson of Woodstock, Copeland-Hanzas of Bradford, Courcelle of Rutland City, Dickinson of St. Albans Town, Donahue of Northfield, Donovan of Burlington, Edwards of Brattleboro, Emmons of Springfield, Evans of Essex, French of Randolph, Haas of Rochester, Head of South Burlington, Hooper of Montpelier, Howard of Rutland City, Kitzmiller of Montpelier, Komline of Dorset, Leriche of Hardwick, Lorber of Burlington, Maier of Middlebury, Martin of Springfield, Martin of Wolcott, Masland of Thetford, McNeil of Rutland Town, Miller of Shaftsbury, Minter of Waterbury, Mitchell of Barnard, Mook of Bennington, Moran of Wardsboro, Morrissey of Bennington, Mrowicki of Putney, Myers of Essex, Nease of Johnson, O'Brien of Richmond, Pellett of Chester, Pugh of South Burlington, Sharpe of Bristol, Smith of Mendon, South of St. Johnsbury, Stevens of Waterbury, Taylor of Barre City, Toll of Danville, Waite-Simpson of Essex, Webb of Shelburne, Weston of Burlington and Wizowaty of Burlington

Whereas, the Green Mountain Girls' State program brings together high school students from all areas of Vermont to our capital city in order to view firsthand the workings of state government, and

Whereas, the lessons learned by these students make a significant contribution to their future growth as valuable citizens and leaders of our state, now therefore be it

**Resolved by the Senate and House of Representatives:**

That the Sergeant at Arms shall make available the chambers of the house of representatives and the senate and the committee meeting rooms of the state house for the Green Mountain Girls' State Program on Wednesday, June 23, 2010, during regular business hours.

Was taken up and adopted on the part of the House.

**Remarks Journalized**

On motion of **Rep. O'Donnell of Vernon**, the following remarks by **Rep. Branagan of Georgia** were ordered printed in the Journal:

“Mr. Speaker:

Happy St. Patrick’s Day Mr. Speaker. On this day over the years we’ve discussed a number of interesting aspects of Irish history and of course the Irish influence on Vermont. One of the most well studied times in Irish history is the period from 1845 until 1852, the Great Gamine. Approximately one million people died and a million more emigrated from Ireland cutting the population nearly in half. The impact and human cost in Ireland – where a third of the population was entirely dependent on the potato for food was made worse by lots of political, social and economic factors. What interests me most about this time in history is the failure of government to step in and protect its people. I can’t understand how the government could not have stepped in sooner to help Irish people survive.

Was there really no food? Absolutely not. There was a blight on the potato crop which got worse for 3 or 4 years. Regretfully thousands of Irish families were dependant on that one food source. But grain continued to grow well, and livestock flourished. Irish exports of calves, bacon and ham actually increased during the famine. The food was shipped under guard from some the most famine-stricken parts of Ireland. Hungry Irish families were so poor they could not afford to purchase these products. And for a number of political reasons government did not step in, at least not effectively enough to prevent the deaths. No issue has provoked so much anger and embittered relations between England and Ireland as "the indisputable fact that huge quantities of food were exported from Ireland to England throughout the period when the people of Ireland were dying of starvation." Ireland remained a net exporter of food throughout most of the famine

The period of the potato blight in Ireland from 1845–51 was full of political confrontation. The mass movement for repeal of the Act of Union had failed in its objectives by the time its founder Dan O’Connell died in 1847. A more radical Young Ireland group seceded from the Repeal movement and attempted an armed rebellion in the Young Irelander Rebellion of 1848. It was unsuccessful. The famine is still a controversial event in Irish history. Debate on the government's response to the failure of the potato crop in Ireland remains an historically and politically-charged issue.

My husband’s family is from a small town in County Galway. He travels there almost every year and now that our children are older, I often accompany him. He has cousins there and when they are together they speak Irish. I’m picking up a few words. There’s a story I’ve heard in English and Irish about

the local landlord during the time of the famine and how he allowed those working on his property and even those living near by in the village to kill his sheep for food. This was blatantly against the law but he allowed it because of the terrible circumstances of the local people, including my husband's family. The land lord's name is still said in only a low voice in a grateful effort to protect him and his family from anyone who might overhear and use the information for harm.

All this happened a long time ago. What can we here in Montpelier learn from the failure of government during this time? Above all we need to listen more than we talk. Keep our eyes open to what is really happening in our districts. The news reported this morning about another large company moving out of state, 43 jobs lost. The advantage of having a citizen legislature is that we are living and working among the people we represent. Take advantage of the close opportunity to find out what is really happening, especially with our most vulnerable. The Irish recovered and though I realize it is really not fair to compare our financial troubles to the terrible time of the Irish famine, we can say that it is never wise to allow our own political views take over the primary responsibility of government: protection of its citizens.

So, Happy St. Patrick's Day. Take a few minutes sometime during the day to think about the many things we can learn from the struggles of these who have gone before us.

### **Third Reading; Bills Passed**

House bills of the following titles were severally taken up, read the third time and passed:

#### **H. 132**

House bill, entitled

An act relating to residential electrical installations;

#### **H. 408**

House bill, entitled

An act relating to improving nutrition programs;

#### **H. 648**

House bill, entitled

An act relating to harassment and hazing policies at independent colleges;

### **Bill Read Third Time and Passed in Concurrence With Proposal of Amendment**

#### **S. 280**

Senate bill, entitled

An act relating to prohibiting texting while operating on a highway

Was taken up and pending third reading of the bill, **Rep. Larocque of Barnet** moved to amend the House proposal of amendment as follows:

By adding a new section to be Sec. 10a to read:

Sec. 10a. 23 V.S.A. § 1259(f) is amended to read:

(f) The penalty for violation of this section shall be as follows:

- (1) ~~\$25.00~~ \$3.00 for a first violation;
- (2) ~~\$50.00~~ \$6.00 for a second violation;
- (3) ~~\$100.00~~ \$10.00 for third and subsequent violations.

Which was disagreed to.

Pending third reading of the bill, **Rep. Donahue of Northfield** moved to amend the House proposal of amendment as follows:

By striking Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read:

Sec. 4. 23 V.S.A. § 1095a is added to read:

§ 1095a. USE OF WIRELESS TELEPHONES AND HANDHELD ELECTRONIC DEVICES; JUNIOR OPERATORS

(a)(1) For the purposes of this section, “wireless telephone” shall mean a telephone that is:

(A) capable of sending or receiving telephone communications without being physically connected to a telephone wire or cord; and

(B) used pursuant to a subscription with a commercial entity that provides wireless telephone service.

(2) “Wireless telephone” shall not be construed to include:

(A) a two-way radio that is operated by using a push-to-talk feature and does not require proximity to the ear of the user; or

(B) a communication feature of a voice-activated global positioning or navigation system that is affixed within the passenger compartment of a motor vehicle.

Which was disagreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

**Bill Amended; Third Reading Ordered****H. 590**

**Rep. Jewett of Ripton**, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to mediation in foreclosure proceedings

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

Sec. 1. Rule 80.1 of the Vermont Rules of Civil Procedure is amended to read:

**RULE 80.1. FORECLOSURE OF MORTGAGES AND JUDGMENT LIENS**

\* \* \*

(b) Complaint; Process.

(1) Complaint. The complaint in an action for foreclosure shall set forth the name of the mortgagor and mortgagee, the date of the mortgage deed, the description of the premises, the debt or claim secured by the mortgage, any attorney's fees claimed under an agreement in the mortgage or other instrument evidencing indebtedness, any assignment of the mortgage, the condition contained in the mortgage deed alleged to have been breached, the names of all parties in interest and, as to each party in interest, the date of record of the instrument upon which the interest is based, shall pray that defendants' equity of redemption in the premises be foreclosed and explain that the defendant or defendants must enter their appearance in order to receive notice of the foreclosure judgment which will set forth the amount of money they must deposit to redeem the premises and the period of time allowed them to deposit this amount. The plaintiff shall attach to the complaint copies of the note and mortgage and proof of ownership thereof, including all assignments and endorsements of the note and mortgage. All parties in interest shall be joined as parties defendant. Failure to join any party in interest shall not invalidate the action nor any subsequent proceedings as to those joined. A claim for foreclosure in an action under this paragraph may not be joined with a claim for a deficiency except when a defendant in the answer has requested foreclosure pursuant to a power of sale in the mortgage.

\* \* \*

Sec. 2. 12 V.S.A. § 4523(b) is amended to read:

(b) The plaintiff shall file a copy of the complaint, without supporting attachments, in the town clerk's office in each town where the mortgaged property is located. The clerk of the town shall minute on the margin of the record of the mortgage that a copy of foreclosure proceedings on the mortgage

is filed. The filing shall be sufficient notice of the pendency of the action to all persons who acquire any interest or lien on the mortgaged premises between the dates of filing the copy of foreclosure and the recording of the final judgment in the proceedings. Without further notice or service, those persons shall be bound by the judgment entered in the cause and be foreclosed from all rights or equity in the premises as completely as though they had been parties in the original action.

Sec. 3. 12 V.S.A. § 4531a is amended to read:

§ 4531a. FORECLOSURE; POWER OF SALE

(a) When a power of sale is contained in a mortgage and the plaintiff in the foreclosure complaint, or the defendant in his or her answer requests a sale, the court may upon entry of judgment of foreclosure order that if the property is not redeemed within the time period allowed by the court, the property be sold pursuant to such power and the court may further determine the time and manner of the sale. If a sale is ordered with respect to any property other than farmland or a dwelling house of ~~two~~ four units or less when currently occupied by the owner as his or her principal residence, the redemption period shall be eliminated or reduced by the court to no more than 30 days. If the property is not redeemed, the plaintiff shall thereupon execute the power of sale and do all things required by it or by the court. No sale of a dwelling house of ~~two~~ four units or less when currently occupied by the owner as his or her principal residence may take place within seven months of service of the foreclosure complaint, unless the court finds that the occupant is making waste of the property or the parties mutually agree after suit to a shorter period.

(b) When a power of sale is contained in a mortgage relating to any property except for a dwelling house of ~~two~~ four units or less that is occupied by the owner as a principal residence, or farmland, instead of a suit and decree of foreclosure, the mortgagee or assignee may, upon breach of mortgage condition, exercise the power of sale without first commencing a foreclosure action or obtaining a foreclosure decree, and may give notices and do all such acts as are authorized or required by the power, including the giving of a foreclosure deed upon the completion of the foreclosure sale; but no sale under and by virtue of a power of sale shall be valid and effectual to foreclose the mortgage unless the conditions of sections 4532 and 4533a of this title are complied with.

\* \* \*

Sec. 4. 12 V.S.A. chapter 163, subchapter 9 is added to read:

Subchapter 9. Mediation in Foreclosure Actions

§ 4701. MEDIATION PROGRAM ESTABLISHED

(a) This subchapter establishes a program to assure the availability of mediation and compliance with the federal Home Affordable Modification Program (“HAMP”) requirements in actions for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence.

(b) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the state and shall be required to have taken a specialized, continuing legal education training course on foreclosure prevention or loss mitigation approved by the Vermont Bar Association.

§ 4702. OPPORTUNITY TO MEDIATE

(a) Prior to commencing an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, Vermont counsel for the mortgagee shall notify the mortgagor that an action for foreclosure is imminent, and that mediation is available in order to consider alternatives to foreclosure. The notice shall be given by any method capable of showing proof of delivery of two copies thereof, with a self-addressed, stamped envelope, to the mortgagor personally, or by leaving copies thereof at the mortgagor’s dwelling with a person of suitable age and discretion then residing therein. Mortgagee’s counsel shall simultaneously send notice to the department of banking, insurance, securities, and health care administration’s mortgage assistance program, which shall maintain a list of all mortgagors who have been sent a notice of the opportunity to mediate.

(b) The notice shall be in substantially the following form:

IMPORTANT NOTICE TO HOMEOWNER

To: [Name(s) of homeowner(s)]

**! YOU ARE AT RISK OF LOSING YOUR HOME !**

A foreclosure case is about to be filed against you in court. If foreclosure is approved by the court, **you may lose your home!**

Before any foreclosure case is filed, you have the right to meet with your lender or mortgage servicer and a neutral third person (a “mediator”) to explore ways to stay in your home, including possible modification of the terms of your existing mortgage. To do this, **you must ask for a meeting within 20 days of receiving this notice.** Simply fill in your name, address, telephone number, and e-mail address, if any, below, sign and date one copy of



this notice and mail it back to your lender's lawyer who is the person who sent you this notice and whose name and address is:

\_\_\_\_\_ [Name] \_\_\_\_\_  
 \_\_\_\_\_ [Address] \_\_\_\_\_  
 \_\_\_\_\_

If you request a meeting, you will be contacted by a mediator.

You have the right to be represented at the meeting by an attorney of your choice.

There may also be ways you can get free help in trying to prevent a foreclosure. Here are some names and numbers you can call to ask about free help:

Vermont Legal Aid: 1-800-889-2047  
Vermont Bar Association: 1-802-223-2020  
[List additional names and numbers here.]

**You should request a meeting** even if you are already talking to your lender or mortgage servicer because those conversations will not necessarily stop foreclosure. **You will not have to pay the mediator.**

**I REQUEST A MEETING WITH MY LENDER OR MORTGAGE SERVICER AND A NEUTRAL THIRD PARTY.**

Printed name: \_\_\_\_\_

Your street address or P.O. box: \_\_\_\_\_

Your town/city and zip code: \_\_\_\_\_

Your telephone number: \_\_\_\_\_

Your e-mail address, if any: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(c) If no request for mediation is received by mortgagee's attorney within 20 days of receipt of the notice by the mortgagor, or if mediation is held but is not successful, the mortgagee shall allege in any complaint, and mortgagee's attorney shall certify on personal knowledge, that notice of the availability of mediation was properly given, that the mortgagor did or did not request mediation, and, if requested, that mediation occurred but was not successful. Mortgagee shall attach to the complaint proof of delivery of the notice and the mediator's report, if mediation occurred.

(d) After an action for foreclosure is commenced, and until the expiration of 20 days from the date of service of the summons and complaint, the court, on motion or request of a party, shall order mediation unless mediation has previously been completed, in which case such order shall be issued only upon a showing of good cause. Thereafter, on its own motion or on the motion of a party for good cause, the court may order mediation. All mediation shall be completed prior to the expiration of the redemption period, and the redemption period shall not be stayed on account of pending mediation. If a mortgagor requests mediation after judgment has been entered, the court may grant the request only if the mortgagor has returned a request for mediation in an amount of time sufficient to allow for a proper mediation to occur, and the court determines that the mortgagor is not attempting to delay the case. The mediator shall report the results of the process, as described in subsection 4704(b) of this subchapter, to the court and both parties in writing.

(e) The court may, on motion of a party, find that the requirements of this subchapter have been met, and that the parties are not required to participate in mediation under this subchapter because they participated in a proceeding providing the substantive protections of mediation under this subchapter.

#### § 4703. MEDIATION

(a) Prior to or during all mediations under this subchapter:

(1) the mortgagee shall consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale;

(2) the participants shall use the calculations, assumptions, and forms established by the HAMP guidelines, and employ all HAMP-related “net present value” calculations in considering a loan modification conducted under this subchapter; and

(3) the mortgagee shall produce for the mortgagor and mediator documentation of its consideration of the options available in subdivisions (1) and (2) of this subsection, including the data used in and the outcome of any HAMP-related “net present value” calculation.

(b) In all mediations under this subchapter, the mortgagor shall provide to the mediator information on his or her household income and any other information required by HAMP.

(c)(1) The following persons shall participate in any mediation under this subchapter:

(A) the mortgagee, or any other person, including the mortgagee’s servicing agent, who shall have:

(i) authority to agree to a proposed settlement, loan modification, or dismissal of the foreclosure action;

(ii) real time access during the mediation to the mortgagor's account information and to the records relating to consideration of the options available in subdivisions (a)(1) and (2) of this section, including the data and factors considered in evaluating each such foreclosure prevention tool; and

(iii) the ability and authority to perform necessary HAMP-related "net present value" calculations and to consider other options available in subdivisions (a)(1) and (2) of this section during the mediation;

(B) counsel for the mortgagee; and

(C) the mortgagor, and counsel for the mortgagor, if represented.

(2) The mediator may permit a party identified in subdivision (1) of this subsection to participate in mediation by telephone or videoconferencing.

(d) The mediator shall include in the mediation process under this subchapter any other person the mediator determines is necessary for effective mediation.

#### § 4704. MEDIATION REPORT

(a) Within seven days of the conclusion of any prelitigation mediation, the mediator shall report the results of the process to both parties in writing. If prelitigation mediation does not result in a settlement or if the court orders mediation after an action for foreclosure has commenced, within seven days of the conclusion of the mediation, the mediator shall report the results of the process to the court and both parties in writing.

(b) The report shall not disclose the mediator's assessment of any aspect of the case or substantive matters discussed during the mediation, except as is required to report the information required by this section. The report shall contain the following items:

(1) The date on which the mediation was held, including the starting and finishing times.

(2) The names and addresses of all persons attending, showing their role in the mediation and specifically identifying the representative of each party who had decision-making authority.

(3) A summary of any substitute arrangement made regarding attendance at the mediation.

(4) All HAMP-related "net present value" calculations and other foreclosure avoidance tool calculations performed prior to or during the

mediation and all information related to the requirements in subsection 4703(a) of this subchapter.

(5) The results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties.

#### § 4705. COMPLIANCE WITH OBLIGATIONS

Upon receipt of the mediator's report, pursuant to subsection 4704(a) of this subchapter, the court shall promptly and without hearing determine whether the servicer has complied with all of its obligations under subsection 4703(a) of this subchapter.

#### § 4706. EFFECT OF MEDIATION PROGRAM ON FORECLOSURE ACTIONS FILED PRIOR TO EFFECTIVE DATE

The court shall, on request of a party, require mediation in any foreclosure action on a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence that was commenced prior to the effective date of this subchapter but only up to 30 days prior to the end of the redemption period.

#### § 4707. NO WAIVER OF RIGHTS; COSTS OF MEDIATION; EXEMPTIONS

(a) The parties' rights in a foreclosure action are not waived by their participation in mediation under this subchapter.

(b) The mortgagee shall pay the required costs for any mediation under this subchapter. The mortgagor shall be responsible for mortgagor's own costs, including the cost of mortgagor's attorney, if any, and travel costs.

(c) No mortgagee may shift to the mortgagor the costs of the mortgagee's or the servicing agent's attorney's fees or travel costs related to mediation.

(d) The requirements of this subchapter shall apply only to foreclosure actions involving loans that are subject to the federal HAMP guidelines.

#### Sec. 5. EFFECTIVE DATE

This act shall take effect 45 days after passage but no later than July 1, 2010.

#### Sec. 6. SUNSET

This act shall be repealed on the same day as the expiration date of the federal Home Affordability Modification Program ("HAMP").

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.

**Bill Read Second Time; Third Reading Ordered****H. 772**

**Rep. Baker of West Rutland** spoke for the committee on General, Housing and Military Affairs.

House bill entitled

An act relating to alcoholic beverage tastings and other liquor licensing issues

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

**Bill Amended; Third Reading Ordered****H. 243**

**Rep. Adams of Hartland**, for the committee on Fish, Wildlife & Water Resources, to which had been referred House bill, entitled

An act relating to the creation of an apprentice hunting license

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

Sec. 1. 10 V.S.A. § 4256 is added to read:

§ 4256. MENTORED HUNTING LICENSES

(a) An individual who holds a mentored hunting license shall be entitled to hunt only when accompanied by an individual, 21 years of age or older, who holds a valid hunting license under subsection 4254(b) of this title. A resident or nonresident mentored hunting license may be issued to any person who has not taken a hunter safety course as required under subdivisions 4254(b)(1) and (2) of this title, provided that:

(1) A mentored hunting license shall only be issued twice to any one individual, and each license shall last until December 31 of the year for which the license was issued.

(2) A mentored hunting license shall not be issued to any individual who has held a valid hunting license under subsection 4254(b) of this title or an equivalent license in any other state.

(3) The mentored hunting license shall not be issued to a person under 16 years of age without the written consent of the applicant's parent or legal guardian given in the presence of the agent issuing the license.

(b) Having held a valid mentored hunting license does not exempt an individual from meeting all the requirements for a hunting license under subsection 4254(b) of this title.

(c) At the time of licensing, the department shall provide each mentored hunter a document to explain the details of the mentored hunting license program and to educate the mentored hunter about hunting safety and responsibility. The applicant shall certify, according to department procedure, that he or she has read the document. The department shall provide copies of this document to all locations authorized to sell licenses pursuant to subsection 4254(e) of this title.

(d) For the purposes of this section, “accompany,” “accompanied,” or “accompanying” means direct control and supervision, including the ability to see and communicate with the mentored hunter without the aid of artificial devices such as radios or binoculars, except for medically necessary devices such as hearing aids or eyeglasses. While hunting, an individual who holds a valid hunting license under subsection 4254(b) of this title shall accompany only one mentored hunter at a time. The individual accompanying the mentored hunter while hunting shall sign and date the license of the mentored hunter.

(e) An individual who holds a mentored hunting license is not eligible to hunt moose pursuant to subsection 4254(b) of this title.

(f) An individual who holds a mentored hunting license shall be subject to the bag limit of the fully licensed accompanying hunter. When game is taken by a mentored hunter, it shall be deemed taken by the fully licensed accompanying hunter.

(g) Notwithstanding subdivision 5101(a)(1) of this title, after tagging and reporting game pursuant to fish and wildlife regulations, a person who holds a mentored hunting license may, unaccompanied by the fully licensed accompanying hunter, transport game the mentored hunter has taken.

(h) The scheduled amount of a fine under section 4555 of this title shall be doubled for a violation of this section, and the fine shall be assessed against the licensed adult accompanying the mentored hunter.

(i) On demand of a game warden or other officer authorized by law to make arrests, or of the owner of the land on which a person is hunting, the individual who holds a mentored hunting license shall exhibit the license.

Sec. 2. 10 V.S.A. § 4252 is amended to read:

§ 4252. ACTIVITIES PERMITTED UNDER LICENSES

Subject to provisions of this part and regulations of the board:

(1) A fishing license shall entitle the holder to take fish.

(2) A hunting license shall entitle the holder to take wild animals, except those that require a separate big game license, and to shoot pickerel.

\* \* \*

(13) A mentored hunting license shall entitle the holder to the same privileges as permitted by the fully licensed accompanying hunter's hunting license under subdivision (2) of this section.

Sec. 3. 10 V.S.A. § 4255 is amended to read:

§ 4255. LICENSE FEES

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

\* \* \*

(12) Mentored hunting license \$ 10.00

(b) Nonresidents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

\* \* \*

(16) Mentored hunting license \$ 10.00

\* \* \*

Sec. 4. 10 V.S.A. § 4502(b) is amended to read:

(b) A person violating provisions of this part shall receive points for convictions in accordance with the following schedule (all sections are in Title 10 of Vermont Statutes Annotated):

(1) Five points shall be assessed for any violation of statutes or rules adopted under this part except those listed in subdivisions (2) and (3) of this subsection.

(2) Ten points shall be assessed for:

\* \* \*

~~(CC) Appendix § 22E. Turkey reporting~~

\* \* \*

(II) Appendix § 37, as it ~~applied~~ applies to annual deer limits

(JJ) § 4256. Mentored hunting license, and the points shall be assessed against the licensed adult who is accompanying the individual holding the mentored hunting license.

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\* \* \*

and that upon passage, the title of the bill be amended to read:

“An act relating to the creation of a mentored hunting license”

**Rep. Branagan of Georgia**, for the committee on Ways and Means, reported that the bill ought to pass when amended as recommended by the committee on Fish, Wildlife and Water Resources.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on Fish, Wildlife & Water Resources and Ways and Means agreed to and third reading ordered.

### **Bill Amended; Third Reading Ordered**

#### **H. 462**

**Rep. Bohi of Hartford**, for the committee on Fish, Wildlife & Water Resources, to which had been referred House bill, entitled

An act relating to encroachments on public waters

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

Sec. 1. 29 V.S.A. § 401 is amended to read:

#### § 401. POLICY

Lakes and ponds which are public waters of Vermont and the lands lying thereunder are a public trust, and it is the policy of the state that these waters and lands shall be managed to serve the public good, as defined by section 405 of this title, to the extent authorized by statute. For the purposes of this chapter, the exercise of this management shall be limited to encroachments subject to section 403 of this title. The management of these waters and lands shall be exercised by the department of environmental conservation in accordance with this chapter and the rules of the board. For the purposes of this chapter, jurisdiction of the department shall be construed as extending to all lakes and ponds which are public waters and the lands lying thereunder, which lie beyond the shoreline or shorelines delineated by the mean water level of any lake or pond which is a public water of the state, as such mean water level is determined by the board. For the purposes of this chapter, jurisdiction shall include encroachments of docks and piers on the boatable tributaries of Lake Champlain and Lake Memphremagog upstream to the first barrier to navigation, and encroachments of docks and piers on the Connecticut River impoundments and boatable tributaries of such impounds upstream to the first barrier to navigation. No provision of this chapter shall be construed to permit trespass on private lands without the permission of the owner.



Sec. 2. 29 V.S.A. § 403 is amended to read:

§ 403. ENCROACHMENT PROHIBITED

(a)(1) Except as provided in subsection (b) of this section, no person shall encroach on any of those waters and lands of lakes and ponds under the jurisdiction of the board without first obtaining a permit under this chapter.

(2) Except as provided in subsection (b) of this section, no person shall encroach on the following waters with a dock or pier without first obtaining a permit under this chapter:

(A) boatable tributaries of Lake Champlain and Lake Memphremagog upstream to the first barrier to navigation; and

(B) Connecticut River impoundments and boatable tributaries of such impoundments upstream to the first barrier to navigation.

(3) No permit shall be granted if the encroachment adversely affects the public good.

(b) A permit shall not be required for the following uses provided that navigation or boating is not unreasonably impeded:

(1) Wooden or metal docks for noncommercial use mounted on piles or floats provided that:

(A) the combined horizontal distance of the proposed encroachment and any existing encroachments located within 100 feet thereof which are owned or controlled by the applicant do not exceed 50 feet and their aggregate surface areas do not exceed 500 square feet; and

(B) concrete, masonry, earth or rock fill, sheet piling, bulkheading, cribwork, or similar construction does not form a part of the encroachment;

(2) A water intake pipe not exceeding two inches inside diameter;

(3) Temporary extensions of existing structures added for a period not to exceed six months, if required by low water;

(4) Ordinary repairs and maintenance to existing commercial and noncommercial structures;

(5) Duck blinds, floats, rafts, and buoys.

(c) Existing encroachments shall not be enlarged, extended, or added to without first obtaining a permit under this chapter, except as provided in subsection (b) of this section.

(d) This chapter shall not apply to encroachments subject to the provisions of chapter 43 of Title 10, concerning dams, or regulations adopted under the provisions of 10 V.S.A. § 1424 concerning public waters.

(e) This section shall not apply to the installation on lake bottoms of small filtering devices not exceeding nine square feet of disturbed area on the end of water intake pipes less than two inches in diameter for the purpose of zebra mussel control.

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

### **Bill Amended; Third Reading Ordered**

#### **H. 509**

**Rep. Deen of Westminster**, for the committee on Fish, Wildlife & Water Resources, to which had been referred House bill, entitled

An act relating to pollution control measures for Lake Champlain

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

Sec. 1. 6 V.S.A. § 4821(a) is amended to read:

(a) Program created. A program is created to provide state financial assistance to Vermont farmers in support of their voluntary construction of on-farm improvements and maintenance of acceptable operating standards designed to abate nonpoint source agricultural waste discharges into the waters of the state of Vermont, consistent with goals of the federal Water Pollution Control Act and with state water quality standards. The program shall be conducted in a manner which makes maximum use of federal financial aid for the same purpose, as provided by this subchapter, and which seeks to use the least costly methods available to accomplish the abatement required. The construction of temporary fencing intended to exclude livestock from entering surface waters of the state shall be an on-farm improvement eligible for assistance under this subchapter when subject to a maintenance agreement entered into with the agency of agriculture, food and markets.

Sec. 2. 6 V.S.A. § 4900 is amended to read:

#### **§ 4900. VERMONT AGRICULTURAL BUFFER PROGRAM**

(a) The secretary of agriculture, food and markets is authorized to develop a Vermont agricultural buffer program in addition to the federal conservation reserve enhancement program in order to compensate farmers for establishing and maintaining harvestable perennial vegetative buffers and installing

conservation practices in ditch networks on ~~annual cropland~~ agricultural land adjacent to the surface waters of the state.

(b) The establishment and annual incentive payments from the agency of agriculture, food and markets under the Vermont agricultural buffer program shall not exceed ~~40 percent~~ of the combined federal and state payment that the relevant ~~cropland~~ agricultural land or conservation practice would be eligible for under the federal conservation reserve enhancement program or another approved conservation program. The incentive payment shall be made annually at the end of the cropping season for a nonrenewable five-year period.

(c) The secretary of agriculture, food and markets may establish by procedure financial and technical criteria for the implementation and operation of the Vermont agricultural buffer program.

(d) Land enrolled in the Vermont agricultural buffer program shall be considered to be in “active use” as that term is defined in 32 V.S.A. § 3752(15).

(e) As used in this section, “surface waters” means all rivers, streams, ditches, creeks, brooks, reservoirs, ponds, lakes, and springs which are contained within, flow through, or border upon the state or any portion of it.

Sec. 3. 6 V.S.A. § 4951 is amended to read:

§ 4951. FARM AGRONOMIC PRACTICES PROGRAM

(a) The farm agronomic practices assistance program is created in the agency of agriculture, food and markets to provide the farms of Vermont with state financial assistance for the implementation of soil-based practices that improve soil quality and nutrient retention, increase crop production, minimize erosion potential, and reduce agricultural waste discharges. The following practices shall be eligible for assistance to farms under the grant program:

- (1) conservation crop rotation;
- (2) cover cropping;
- (3) strip cropping;
- (4) cross-slope tillage;
- (5) zone or no-tillage;
- (6) pre-sidedress nitrate tests;

(7) annual maintenance of a nutrient management plan that is no longer receiving funding under a state or federal contract, provided the maximum assistance provided to a farmer under this subdivision shall be \$1,000.00 per year; ~~and~~

(8) educational and instructional activities to inform the farmers and citizens of Vermont of:

(A) the impact on Vermont waters of agricultural waste discharges;

(B) the federal and state requirements for controlling agricultural waste discharges;

(9) implementing alternative manure application techniques; and

(10) additional soil erosion reduction practices.

(b) Funding available under section 4827 of this title for nutrient management planning may be used to fund practices under this section.

Sec. 4. 10 V.S.A. § 321(d) is amended to read:

(d) On behalf of the state of Vermont, the board shall seek and administer federal farmland protection funds to facilitate the acquisition of interests in land to protect and preserve in perpetuity important farmland for future agricultural use. Such funds shall be used to implement and effectuate the policies and purposes of this chapter. In seeking federal farmland protection funds under this subsection, the board shall seek to maximize state participation in the federal wetlands reserve program in order to allow for increased or additional implementation of conservation practices on farmland protected or preserved under this chapter.

Sec. 5. 10 V.S.A. § 1002 is amended to read:

#### § 1002. DEFINITIONS

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

\* \* \*

(10) ~~“Watercourse” means any depression two feet or more below the elevation of surrounding land serving to give direction to a current or flow of water having a bed and well defined bank~~ perennial stream. “Watercourse” shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.

Sec. 6. 10 V.S.A. § 1021(a) is amended to read:

(a) A person shall not change, alter, or modify the course, current, or cross-section of any watercourse ~~with a drainage area greater than ten square miles at the location of the proposed change, alteration or modification,~~ or of designated outstanding resource waters, within or along the boundaries of this

state either by movement, fill, or by excavation of ten cubic yards or more in any year, unless authorized by the secretary.

Sec. 7. 10 V.S.A. § 7501 is amended to read:

§ 7501. GENERAL PERMITS

(a) When the secretary deems it to be appropriate and consistent with the purpose of this chapter, the secretary may issue a general permit under the following chapters of this title: chapter 23 (air pollution control) for stationary source construction permits; chapter 37 (water resources management) for aquatic nuisance control permits authorizing chemical treatment by the agency of natural resources, a department within that agency, or an appropriate federal agency; chapter 56 (public water supply) for construction permits; ~~and~~ chapter 159 (waste management) for solid waste transfer station and recycling certifications and categorical certifications; and chapter 41 (regulation of stream flow) for stream alteration permits.

(b) A general permit issued under this chapter shall contain those terms and conditions necessary to ensure that the category or class subject to the general permit will comply with the provisions of the statutes and the rules adopted under those statutes applicable to the category or class. These terms and conditions may include providing for specific emission or effluent limitations and levels of treatment technology; monitoring, recording, or reporting; the right of access for the secretary; and any additional conditions or requirements the secretary deems necessary to protect human health and the environment.

(c) This chapter is in addition to any other authority granted to the agency or department.

(d) The secretary may adopt rules to implement this chapter.

(e) The secretary may issue a nonreporting general permit for certain specific stream alteration activities under chapter 41 of this title.

Sec. 8. ANR REPORT ON GENERAL PERMIT PROGRAM FOR STREAM  
ALTERATION

(a) On or before January 15, 2011, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding a proposed general permit program for stream alteration under chapter 41 of Title 10.

(b) The report required under subsection (a) of this section shall:

(1) Define the thresholds, classes of activities, or other categories of activities that will be regulated under the general permit program.

(2) Summarize the requirements or management practices that stream alteration activities will be subject to under a general permit, including whether any activity or class of activities will be subject to a nonreporting general permit.

(3) Summarize the scientific basis for the thresholds, classes of activities, or categories of activities regulated under the proposed general permit program.

Sec. 9. 19 V.S.A. § 996 is added to read:

§ 996. HIGHWAY CONSTRUCTION, MAINTENANCE, AND REPAIR  
BEST MANAGEMENT PRACTICES

(a) The agency of transportation shall work with municipal representatives to revise the agency of transportation's town and bridge standards in order to incorporate a suite of practical and cost-effective best management practices, as approved by the agency of natural resources, for the construction, maintenance, and repair of all existing and future state and town highways. These best management practices shall address activities which have a potential for causing pollutants to enter the groundwater and waters of the state, including stormwater runoff and direct discharges to state waters. The best management practices shall not supersede any requirements for stormwater management already set forth in 10 V.S.A. §§ 1264 and 1264a that apply to state and town highways. The agency of transportation shall report to the house and senate committees on transportation, the house committee on fish, wildlife and water resources, and the senate committee on natural resources and energy by January 15, 2011, the best management practices to be incorporated into the agency of transportation's town and bridge standards.

(b) Beginning January 15, 2013, and every four years thereafter, the secretary in consultation with municipal representatives and with approval from the agency of natural resources, shall review and revise, as appropriate, town road and bridge standards in order to ensure the standards are protective of water quality.

Sec. 10. 19 V.S.A. § 309b is amended to read:

§ 309b. LOCAL MATCH; CERTAIN TOWN HIGHWAY PROGRAMS

(a) Notwithstanding subsection 309a(a) of this title, grants provided to towns under the town highway structures program shall be matched by local funds sufficient to cover 20 percent of the project costs, unless the town has adopted road and bridge standards and, has completed a network inventory, and has submitted an annual certification of compliance for town road and bridge standards to the secretary, in which event, the local match shall be sufficient to cover 10 percent of the project costs. The secretary may adopt

rules to implement the town highway structures program. Town highway structures projects receiving funds pursuant to this subsection shall be the responsibility of the applicant municipality.

(b) Notwithstanding subsection 309a(a) of this title, grants provided to towns under the class 2 town highway roadway program shall be matched by local funds sufficient to cover 30 percent of the project costs, unless the town has adopted road and bridge standards ~~and~~, has completed a network inventory, and has submitted an annual certification of compliance for town road and bridge standards to the secretary, in which event, the local match shall be sufficient to cover 20 percent of the project costs. The secretary may adopt rules to implement the class 2 town highway roadway program. Class 2 town highway roadway projects receiving funds pursuant to this subsection shall be the responsibility of the applicant municipality, and a municipality shall not receive a grant in excess of \$175,000.00.

\* \* \*

#### Sec. 11. REPEAL OF SUNSET OF VERMONT AGRICULTURAL BUFFER PROGRAM

Sec. 56 of No. 147 of the Acts of the 2005 Adj. Sess. (2006) (sunset on Vermont agricultural buffer program) is repealed.

Sec. 12. Sec. 14 of No. 31 of the Acts of 2009 is amended to read:

#### Sec. 14. EFFECTIVE DATE

(a) This section and Secs. 1 (findings), 12 (ANR wetlands report), and 13 (Bristol Pond) of this act shall take effect July 1, 2009.

(b) Secs. 2 (retitling 10 V.S.A. chapter 37), 3 (wetlands definitions), 4 (ANR wetlands authority), 5 (wetlands permitting), 6 (recodification of aquatic nuisance control authority), 7 (water resources panel rulemaking authority), 8 (ANR enforcement authority), 9 (appeals), and 10 (marketability of title), ~~and 11 (transition)~~ of this act shall take effect 45 days after such time as the water resources panel has issued both a rule updating the Vermont significant wetlands inventory maps and a rule updating the Vermont wetland rules.

(c) Sec. 11 (transition) of this act shall take effect January 1, 2010.

#### Sec. 13. EFFECTIVE DATES

(a) This section and Secs. 1 (livestock fencing; best management practices), 2 (Vermont agricultural buffer program), 3 (farm agronomic practices program), 4 (VHCB; agricultural land preservation), 8 (ANR report on general permit program), 9 (agency of transportation best management practices), 11

(repeal of sunset on Vermont agricultural buffer program), and 12 (effective date of wetlands transition) of this act shall take effect upon passage.

(b) Secs. 5 (definition of watercourse) and 6 (stream alteration permits) of this act shall take effect March 31, 2011.

(c) Sec. 7 (ANR general permit authority) of this act shall take effect February 15, 2011.

(d) Sec. 10 (local match town highway programs) of this act shall take effect July 1, 2011.

and that after passage the title of the bill be amended to read: “An act relating to pollution control measures for Lake Champlain and the other waters of the state”

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

#### **Action on Bill Postponed**

#### **H. 528**

House bill, entitled

An act relating to the illegal cutting, removal, or destruction of forest products

Was taken up and pending the reading of the report of the committee on Agriculture, on motion of **Rep. Conquest of Newbury**, action on the bill was postponed until the next legislative day.

#### **Bill Amended; Third Reading Ordered**

#### **H. 540**

**Rep. Burke of Brattleboro**, for the committee on Transportation, to which had been referred House bill, entitled

An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation

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

Sec. 1. 23 V.S.A. § 1033 is amended to read:

§ 1033. PASSING ON THE LEFT MOTOR VEHICLES AND VULNERABLE USERS



(a) ~~Vehicles~~ Passing motor vehicles. Motor vehicles proceeding in the same direction may be overtaken and passed only as follows:

(1) The driver of a motor vehicle overtaking another motor vehicle proceeding in the same direction may pass to its left at a safe distance, and when so doing shall exercise due care, ~~may~~ shall not pass to the left of the center of the highway unless the way ahead is clear of approaching traffic, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken motor vehicle shall give way to the right in favor of the overtaking motor vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(b) Definition. As used in this chapter, “vulnerable user” means a pedestrian and a highway worker in highway equipment; a person operating a wheelchair or other personal mobility device, whether motorized or not; a person operating a bicycle or other nonmotorized means of transportation (such as, but not limited to, roller skates, rollerblades, or roller skis); a person riding, driving, or herding an animal; or a person operating a farm tractor or implement of husbandry.

(c) Passing vulnerable users. The operator of a motor vehicle approaching or passing a vulnerable user shall exercise due care, which includes using every reasonable precaution and increasing clearance from the vulnerable user, to safely clear the vulnerable user.

Sec. 2. 23 V.S.A. § 1039 is amended to read:

§ 1039. FOLLOWING TOO CLOSELY, CROWDING, AND HARASSMENT

(a) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon, and the conditions of, the highway. The operator of a vehicle shall not, in a careless or imprudent manner, approach, pass, or maintain speed unnecessarily close to a vulnerable user, and an occupant of a vehicle shall not throw any object or substance at a vulnerable user.

\* \* \*

Sec. 3. 23 V.S.A. § 1065 is amended to read:

§ 1065. HAND SIGNALS

(a) ~~All~~ A right or left turn shall not be made without first giving a signal of intention either by hand or by signal in accordance with section 1064 of this

title. Except as provided in subsection (b) of this section, all signals to indicate change of speed or direction, when given by hand, shall be given from the left side of the vehicle and in the following manner:

- (1) Left turn. – Hand and arm extended horizontally.
- (2) Right turn. – Hand and arm extended upward.
- (3) Stop or decrease speed. – Hand and arm extended downward.

~~(b) No turn to right or left may be made without first giving a signal of an intention to do so either by hand or by signal in accordance with section 1064 of this title~~ A person operating a bicycle may give a right-turn signal by extending the right hand and arm horizontally and to the right side of the bicycle.

Sec. 4. 23 V.S.A. § 1127 is amended to read:

§ 1127. CONTROL IN PRESENCE OF ~~HORSES AND CATTLE~~ ANIMALS

(a) Whenever upon a public highway and approaching a vehicle drawn by a ~~horse or other~~ draft animal, ~~or approaching a horse or other~~ an animal upon which a person is riding, or animals being herded, the operator of a motor vehicle shall operate the vehicle in such a manner as to exercise every reasonable precaution to prevent the frightening of ~~such horse or~~ any animal and to ~~insure~~ ensure the safety and protection of the animal and the person riding ~~or, driving, or herding~~.

(b) The operator of a motor vehicle shall yield to any ~~cattle, sheep, or goats~~ which are animals being herded on or across a highway.

Sec. 5. 23 V.S.A. § 1139(a) is amended to read:

(a) A person operating a bicycle upon a roadway shall exercise due care when passing a standing vehicle or one proceeding in the same direction and generally shall ride as near to the right side of the roadway as practicable ~~exercising due care when passing a standing vehicle or one proceeding in the same direction, but shall ride to the left or in a left lane when:~~

- (1) preparing for a left turn at an intersection or into a private roadway or driveway;
- (2) approaching an intersection with a right turn lane if not turning right at the intersection;
- (3) overtaking another highway user; or
- (4) taking reasonably necessary precautions to avoid hazards or road conditions.

Sec. 6. 23 V.S.A. § 1141(a) is amended to read:

(a) ~~No~~ A person may shall not operate a bicycle at nighttime from one-half hour after sunset until one-half hour before sunrise unless it is equipped with a lamp on the front, which emits a white light visible from a distance of at least 500 feet to the front, and with a red reflector on the rear, which shall be visible at least 300 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. Lamps emitting flashing or steady red lights visible to the rear may be used in addition to the red reflector.

Sec. 7. REPEAL

23 V.S.A. § 1053 (passing pedestrians on a highway) is repealed.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House amend the bill as recommended by the committee on Transportation? **Rep. Lanpher of Vergennes** moved to amend the report of the committee on Transportation as follows:

In Sec. 1, in subsection (b), by striking the words "pedestrian and a highway worker in highway equipment" and inserting in lieu thereof the words "pedestrian, including a highway worker"

Which was agreed to.

Thereupon, the report of the committee on Transportation, as amended, was agreed to and third reading was ordered.

**Action on Bill Postponed**

**H. 594**

House bill, entitled

An act relating to access to restroom facilities

Was taken up and pending the reading of the report of the committee on Commerce and Economic Development, on motion of **Rep. Bissonnette of Winooski**, action on the bill was postponed until the next legislative day.

**Bill Amended; Third Reading Ordered**

**H. 639**

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

An act relating to motor vehicle insurance for volunteer drivers

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

Sec. 1. 8 V.S.A. § 4211 is added to read:

§ 4211. VOLUNTEER DRIVERS

(a) An insurer may not refuse to issue motor vehicle liability insurance to an applicant solely because the applicant is a volunteer driver. An insurer may not impose a surcharge or otherwise increase the rate for a motor vehicle policy solely on the basis that the named insured, a member of the insured's household, or a person who customarily operates the insured's vehicle is a volunteer driver.

(b) For purposes of this section, "volunteer driver" means a person who provides services, including transporting individuals or goods, without compensation above mileage expenses to a charitable organization or nonprofit corporation established under Title 11B, pursuant to a written agreement.

(c) This section does not prohibit an insurer from refusing to renew, imposing a surcharge on, or otherwise raising the rate for a motor vehicle liability insurance policy based upon factors other than the volunteer status of the insured driver.

Sec. 2. EFFECTIVE DATE

Sec. 1 of this act shall apply to all policies and contracts offered, issued, or renewed on and after September 1, 2010.

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.

**Bill Amended; Third Reading Ordered**

**H. 680**

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

An act relating to termination of occupancy of farm employee housing

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

Sec. 1. LEGISLATIVE FINDINGS AND RECOMMENDATIONS

The general assembly finds:

(1) Vermont farmers frequently provide housing to their employees as a benefit of agricultural work performed.

(2) Farmers and their employees have a reasonable expectation that where housing is provided as a benefit of employment, each party has certain rights and responsibilities that should be mutually understood.

(3) The purpose of this act is to provide a clear and consistent framework for the rights and responsibilities of farmers and their employees where housing is provided, including due process protections for the farm employee.

(4) With the increasing presence of a mobile workforce, the general assembly recognizes that English may not be the primary language for a number of farm employees in Vermont.

(5) The general assembly therefore recommends that the agency of agriculture, food and markets, the department of health, the department of labor, the department of economic, housing and community affairs, and other appropriate agencies make available on their websites the notice provisions set forth in 9 V.S.A. § 4469a(c) in the languages most commonly used by farm employees in Vermont.

(6) The general assembly further recommends that state agencies providing guidance on farm employer-employee relations direct farmers who provide housing to their employees:

(A) upon commencement of farm employment, to inform a farm employee in the employee's native language that, unless otherwise provided by contract, the right to occupy farm housing will end upon termination of farm employment; and

(B) upon termination of farm employment, to provide the notice provisions set forth in 9 V.S.A. § 4469a(c) to the farm employee in the farm employee's native language.

Sec. 2. 9 V.S.A. § 4469a is added to read:

4469a. TERMINATION OF OCCUPANCY OF FARM EMPLOYEE  
HOUSING

(a) For the purposes of this section:

(1) "Farm employee" means an individual employed by a farm employer for farming operations.

(2) "Farm employer" means a person earning at least one-half of his or her annual gross income from the business of farming as that term is defined in Section 1.175-3 of the regulations issued by the United States Department of the Treasury under the Internal Revenue Code of the United States, as amended.

(3) "Housing provided as a benefit of farm employment" means housing owned or controlled by the farm employer, whether located on or off the farm premises, and provided for the occupancy of the farm employee and the farm employee's family or household members for no payment other than the farm employee's labor. Payment of utility and fuel charges paid by the farm employee does not affect the designation of housing provided as a benefit of farm employment.

(b) Unless otherwise provided in a written employment contract, a farm employer who provides housing to a farm employee and the farm employee's family or household members as a benefit of the employment may terminate that benefit and all rights of the employee and the employee's family or household members to occupy the housing when the employee's employment is terminated.

(c) The termination of the housing benefit shall be by written notice served upon the former farm employee by a law enforcement officer in accordance with Rule 4 of the Vermont Rules of Civil Procedure. The notice shall be served together with a summons and complaint seeking a writ of possession under this section to remove the former farm employee from occupancy of the farm housing. The notice shall include the following statements, in boldface print:

"Your employment and housing benefit have been terminated.

"Your employer has filed a legal proceeding in \_\_\_\_\_ County superior court to obtain a court order directing you and any family or household member cohabitating in the dwelling to vacate and leave the dwelling and remove all of your possessions. The address and telephone number of the court are as follows: \_\_\_\_\_."

"The court will hold a hearing on your former employer's request for a court order directing you to leave and vacate the dwelling. The hearing will be held on \_\_\_\_\_ at \_\_\_\_\_ in the \_\_\_\_\_ am/pm at the courthouse at the address listed above. You have the right to be served with notice of the hearing at least ten days prior to the hearing date. You have the right to appear at this hearing. At the hearing, your former employer must prove that the dwelling is needed for housing a replacement employee, and that your failure to vacate is causing actual hardship.

"If you believe that your employment was terminated wrongfully, that your dwelling house was not habitable, or if you have any other claim against your former employer, you may file a counterclaim against your former employer as explained in the summons and complaint that are being served upon you with this notice.

“Filing a counterclaim against your former employer will not delay or stop the court from ordering you to leave and vacate the dwelling.

“You may wish to seek legal advice from a licensed attorney. If you believe you cannot afford an attorney, you may contact the clerk of the court listed above for information about the availability of an attorney at public expense, although you may not be entitled to an attorney at public expense.”

(d) A farm employer shall be entitled to a show cause hearing on an expedited basis for the purpose of demonstrating that the failure of the former farm employee to vacate the farm housing is causing an actual hardship to the farm employer. The show cause hearing shall be held not less than 10 calendar days after service on the former employee of the notice described in subsection (c) of this section. The issue before the court at the hearing shall be whether the farm employer has suffered actual hardship because of the unavailability of the farm housing for a replacement employee.

(e) If the court finds that the farm employer has suffered actual hardship because of the unavailability of the farm housing for a replacement employee, the court shall enter an order approving a writ of possession, which shall be executed no sooner than five days nor later than 30 days after the writ is served, to put the plaintiff into possession.

(f) If the court does not make a finding on behalf of the farm employer, the farm employer may seek an eviction pursuant to sections 4467 and 4468 of this chapter and subchapter 3 of chapter 169 of Title 12. In any action pursuant to this section, the farm employer may file a motion for payment of the reasonable rental value of the premises into court pursuant to 12 V.S.A. § 4853a.

(g) The right of a former farm employee to pursue any claim that he or she may have against the former farm employer by way of a counterclaim in a civil action brought pursuant to this section is expressly preserved. The assertion of a counterclaim shall not have the effect of delaying or preventing the removal of the employee from the housing, nor shall the employee be entitled to obtain injunctive relief in the form of repossession of farm housing. A former employee who prevails on a counterclaim shall be entitled to relief as provided by applicable law.

(h) Sections 4455, 4461, and 4467 of this chapter shall not apply to housing provided to a farm employee as a benefit of the employment.

### Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

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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.

**Joint Resolution Adopted**

**J.R.H. 42**

Joint resolution, entitled

Joint resolution in support of Congress's adoption of the Main Street Fairness Act;

Was taken up and adopted on the part of the House.

**Joint Resolution Adopted**

**J.R.H. 43**

Joint resolution, entitled

Joint resolution urging Congress to amend the Toxic Substances Control Act of 1976;

Was taken up and adopted on the part of the House.

**Joint Resolution Placed on Calendar**

**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

Offered by: Committee on Commerce and Economic Development

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

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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.

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

**Adjournment**

At four o'clock and twenty minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.