

Journal of the House

Wednesday, March 24, 2010

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Beth Maier, Deacon of the Episcopal Church in Montpelier, VT.

House Bill Introduced

H. 790

By the committee on Corrections and Institutions,
An act relating to capital construction and state bonding;
Under the rule, placed on the Calendar for notice.

Senate Bills Referred

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

S. 262

Senate bill, entitled

An act relating to a study of coverage of appropriate services for children with autism spectrum disorders;

To the committee on Human Services.

S. 264

Senate bill, entitled

An act relating to stop and hauling charges;

To the committee on Agriculture.

S. 279

Senate bill, entitled

An act relating to nonunanimous jury verdicts in civil actions;

To the committee on Judiciary.

S. 285

Senate bill, entitled

An act relating to promoting health care coverage for farmers;

To the committee on Agriculture.

S. 295

Senate bill, entitled

An act relating to the creation of an agricultural development director;

To the committee on Agriculture.

S. 296

Senate bill, entitled

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

To the committee on Corrections and Institutions.

S. 297

Senate bill, entitled

An act relating to miscellaneous changes to education law;

To the committee on Education.

Joint Resolution Referred to Committee**J.R.S. 54**

By the Committee on Agriculture,

J.R.S. 54. Joint resolution relating to the payment of dairy hauling costs.

Whereas, in the past three years, the Vermont General Assembly has carefully considered the issue of dairy hauling costs and the impact upon Vermont dairy farmers, and

Whereas, in contrast to market practices prevalent in the Midwest and western dairy states, New England dairy farmers typically are forced to pay the costs of hauling milk from the farm to a buyer's processing plant or similar facility, and

Whereas, dairy hauling costs are incurred by dairy farmers, regardless of the price of milk, and

Whereas, in virtually every other industry, the purchaser of goods pays the costs of transporting the goods from the place of manufacture to the purchaser, and

Whereas, the average dairy hauling costs for a Vermont farm milking roughly 200 cows meet or exceed \$20,000.00 per year, and

Whereas, according to a recent New York study of dairy hauling costs, hauling charges paid by dairy producers range from an annual average of \$0.50 to \$0.57 per hundredweight of milk for all size farms, and the average hauling charge, including transportation credits, ranges from 3.1 to 4.4 percent of the gross value of the farm milk, and

Whereas, pursuant to Vermont's Act 50 (2007), the Vermont Milk Commission carefully considered the potential economic impacts of shifting responsibility for dairy hauling costs from the producer to the purchaser of milk, and

Whereas, the Vermont Milk Commission has concluded, and legislative testimony received from the Vermont Agency of Agriculture, Food and Markets, industry representatives, and dairy farmers has confirmed that shifting the payment of dairy hauling costs from producer to purchaser will increase the price of Vermont milk, making Vermont milk more expensive and less competitive than milk produced in neighboring states, and

Whereas, Vermont, or any other state which unilaterally mandates a shift in the cost of dairy hauling from producer to purchaser, will suffer a competitive disadvantage relative to neighboring producer states due to the increased cost of its milk, and

Whereas, given this reality and the economic crisis facing dairy farmers throughout New England, it is extremely unlikely that any state will elect to be the first to mandate this shift in dairy hauling costs, therefore requiring a solution that is national in scope, and

Whereas, in November 2009, United States Representatives Michael Arcuri and Chris Lee of New York introduced federal legislation (H.R. 4117) to eliminate all hauling costs for milk producers, and

Whereas, United States Secretary of Agriculture Thomas Vilsack has convened a 17-member United States Department of Agriculture Dairy Industry Advisory Committee to review the issues of farm milk price volatility and dairy farmer profitability, and to offer suggestions and ideas on how the United States Department of Agriculture can best address these issues to meet the dairy industry's needs, now therefore be it

Resolved by the Senate and House of Representatives:

That the Vermont General Assembly urges United States Secretary of Agriculture Thomas Vilsack to ensure that dairy hauling costs are considered by the United States Department of Agriculture Dairy Industry Advisory Committee as a means to address dairy farmer profitability, and to pursue a national policy requiring that dairy hauling costs be borne by the marketplace rather than dairy producers, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Agriculture Thomas Vilsack, the Vermont congressional delegation, and the members of the United States Department of Agriculture Dairy Industry Advisory Committee.

Which was read and, in the Speaker's discretion, treated as a bill and referred to the committee on Agriculture.

Joint Resolution Adopted in Concurrence**J.R.S. 55**

By Senator Shumlin,

J.R.S. 55. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 26, 2010, it be to meet again no later than Tuesday, March 30, 2010.

Was taken up read and adopted in concurrence.

Bill Amended; Third Reading Ordered**H. 527**

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

An act relating to municipal recovery of costs of fire department response

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

Sec. 1. MUNICIPAL COST RECOVERY STUDY COMMITTEE

(a) There is created the municipal cost recovery study committee to evaluate whether or not, or to what extent, to allow municipalities to recover the costs of fire department response to emergencies and nonemergencies on class 1 and federal highways.

(b) The committee shall be comprised of seven members as follows:

(1) Two members appointed by the Vermont League of Cities and Towns, one representing a large municipality and one representing a small municipality;

(2) The commissioner of banking, insurance, securities, and health care administration or designee;

(3) The commissioner of public safety or designee;

(4) The secretary of transportation or designee;

(5) Two members appointed by the Vermont Coalition of Fire and Rescue Services, one representing volunteer firefighters and one representing career firefighters.

(c) The committee shall study and evaluate, as it relates to the issue of allowing municipalities to recover the costs of fire department response to emergencies and nonemergencies on class 1 and federal highways:

(1) The state's public policy;

(2) The state's responsibility;

(3) The state's fiscal responsibility, including potential funding mechanisms;

(4) Costs to insurance companies;

(5) Inequities between and among municipalities;

(6) Approaches taken in other states.

(d) The department of public safety shall ensure that administrative support is provided to the committee, and the department may do so by arranging for that support to be provided by a willing municipal member of the Vermont League of Cities and Towns.

(e) By January 1, 2011 the committee shall report its recommendations in the form of proposed legislation to the general assembly.

(f) The committee may meet as often as necessary to fulfill its obligations under this section.

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. 722**

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

An act relating to the resale of tickets

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

Sec. 1. 9 V.S.A. Chapter 117 is added to read:

CHAPTER 117. INTERNET SALES

§ 4190. INTERFERING WITH INTERNET TICKET SALES

(a) A person shall not intentionally use a computer program or other software to interfere with or circumvent on a ticket seller's website a security measure, access control system, or other control or measure used to ensure an equitable ticket buying process for tickets of admission to a sporting event, theatre, musical performance, or place of public entertainment or amusement of any kind.

(b) A person who suffers damages or injury as a result of a violation of this section may sue for:

- (1) appropriate equitable relief;
- (2) reasonable attorney's fees and costs; and
- (3) the greater of:
 - (A) actual damages suffered; or
 - (B) \$25,000 per violation of this section.

Sec. 2. 9 V.S.A. § 2435 is amended to read:

§ 2435. NOTICE OF SECURITY BREACHES

- (a) This section shall be known as the Security Breach Notice Act.
- (b) Notice of breach.

(1) Except as set forth in subsection (d) of this section, any data collector that owns or licenses computerized personal information that includes personal information concerning a consumer shall notify the consumer that there has been a security breach following discovery or notification to the data collector of the breach. Notice of the security breach shall be made in the most expedient time possible ~~and~~, without unreasonable delay, and within 45 days of

discovery of the breach, unless delay is requested by law enforcement pursuant to consistent with the legitimate needs of the law enforcement agency, as provided in subdivision (3)(4) of this subsection, or with necessitated by any measures necessary to determine the scope of the security breach and restore the reasonable integrity, security, and confidentiality of the data system.

(2) Any data collector that maintains or possesses computerized data containing personal information of a consumer that the ~~business data collector~~ does not own or license or any data collector that acts or conducts business in Vermont that maintains or possesses records or data containing personal information that the data collector does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subdivision (3)(4) of this subsection.

(3) In the most expedient time possible and within 45 days of discovery of the security breach, unless delay is necessary to determine the scope of the security breach under subdivision (1) of this subsection or is requested by law enforcement pursuant to subdivision (4) of this subsection, a data collector or other entity subject to this subchapter, other than a person or entity licensed or registered with the department of banking, insurance, securities, and health care administration under Title 8 or this title, shall provide the attorney general's office notice of a security breach, notice of the number of Vermont consumers affected if known to the data collector, and a copy of the notice provided to a consumer under subdivision (1) of this subsection.

~~(3)(4)~~ The notice to a consumer required by this subsection shall be delayed upon request of a law enforcement agency. A law enforcement agency may request the delay if it believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. In the event law enforcement makes the request in a manner other than in writing, the data collector shall document such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. A law enforcement agency shall promptly notify the data collector when the law enforcement agency no longer believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. The data collector shall provide notice required by this section without unreasonable delay upon receipt of a written communication, which includes facsimile or

electronic communication, from the law enforcement agency withdrawing its request for delay.

~~(4)~~(5) The notice to a consumer shall be clear and conspicuous. The notice shall include a description of each of the following, if known to the data collector:

(A) The incident in general terms.

(B) The type of personal information that was subject to the security breach ~~unauthorized access or acquisition~~.

(C) The general acts of the ~~business~~ data collector to protect the personal information from further unauthorized access or acquisition.

(D) A toll-free telephone number that the consumer may call for further information and assistance.

(E) Advice that directs the consumer to remain vigilant by reviewing account statements and monitoring free credit reports.

(F) The date or dates of the security breach and the date of the data collector's discovery of the security breach.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

and that the title of the bill be amended to read: "An act relating to notice of security breaches and internet ticket sales"

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. 769

Rep. Taylor of Barre City spoke for the committee on Agriculture.

Rep. Zuckerman of Burlington, for the committee on Ways and Means, to which had been referred House bill, entitled

An act relating to the licensing and inspection of plant and tree nurseries

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. § 4021 is amended to read:

§ 4021. DEFINITIONS

As used in this chapter:

(1) "Secretary" means the secretary of agriculture, food and markets or his or her designee.

(2) "Agency" means the agency of agriculture, food and markets.

(3) "Nursery" means all lands, premises, and buildings on or in which nursery stock is grown, transported, or offered for sale.

(4) "Nursery dealer" means any person who ~~buys,~~ sells, or distributes nursery stock for commercial gain.

(5) "Nursery grower" means any person engaged in growing, propagating, or production of nursery stock for commercial gain.

(6) "Nursery license" means the license issued to nursery dealers or nursery growers under section 4024 of this title.

(7) "Nursery stock" means all woody or herbaceous shrubs, trees, plants, and vines, including bulbs and rhizomes as well as buds, grafts, scions, and other parts capable of propagation whether wild, cultivated, or grown under artificial covering. This definition does not include cut flowers or seeds.

Sec. 2. 6 V.S.A. § 4023 is amended to read:

§ 4023. ~~NURSERY INSPECTION; ISSUANCE OF CERTIFICATE FEES~~

~~(a) The secretary shall, at least annually, but not more than three times a year, inspect all nurseries or places within the state where nursery stock is grown, collected or stored. If, upon examination, the nursery stock is found to be healthy and apparently free from pests and diseases, the secretary shall issue a certificate. The secretary shall establish by rule the conditions for the issuance, suspension or revocation of the certificate, and may place any restrictions or requirements upon the certificate which he or she deems necessary.~~

~~(b) No person may operate a nursery without a valid certificate.~~

~~(c) The secretary may charge a fee for any inspection conducted under the provisions of this chapter. The amount of the fee shall be determined in a manner to be established by rule, but shall be no greater than is necessary, in the judgment of the secretary, to meet all expenses incurred in making the inspection. The secretary, as he or she deems necessary, may inspect nursery stock in the possession of a nursery grower or nursery dealer licensed under section 4024 of this title or any place within the state where nursery stock is grown, collected, stored, sold, offered for sale, or distributed. After the~~

inspection of a licensed nursery grower or nursery dealer, the secretary may issue an inspection certificate.

(b) The secretary shall charge a fee for any inspection of a nursery grower or nursery dealer that is not licensed under section 4024 of this title. The secretary shall charge a fee for an inspection of a nursery dealer or nursery grower licensed under section 4024 of this title, provided that the initial inspection of a licensed nursery grower or nursery dealer in any calendar year shall be at no cost. The amount of the inspection fee shall be the same fee as that charged for a nursery dealer's license as required by section 4024 of this title. The secretary shall not charge an inspection fee when responding to consumer complaints or for technical assistance under section 1036 of this title for the management of plant pests, as that term is defined in section 1030 of this title.

Sec. 3. 6 V.S.A. § 4024 is amended to read:

§ 4024. ~~NURSERY DEALERS;~~ NURSERY LICENSE

~~(a) Every nursery dealer purchasing, selling or installing stock in this state shall annually apply for and receive a nursery dealer's license from the secretary. The secretary may inspect nursery stock in the possession of licensed dealers as he or she deems necessary. The secretary shall establish by rule the conditions for the issuance, suspension or revocation of the license, and may place any restrictions or requirements upon the license which he or she deems necessary.~~

~~(b) Any person soliciting orders for, selling, delivering or installing nursery stock shall have in his or her possession a copy of the license of the nursery which he or she represents or his or her own license, if required by subsection (a) of this section, which he or she shall show upon demand to prospective buyers or the secretary.~~

~~(c) Any person who has been issued a certificate by the secretary under section 4023 of this title shall automatically be issued a nursery dealer's license. No person shall operate as a nursery grower or nursery dealer in the state without first obtaining a nursery license from the secretary. A nursery grower or nursery dealer shall apply annually for a nursery license on a form provided by the secretary. The secretary shall establish by rule the conditions for the issuance, suspension, or revocation of a nursery license, and may place any restrictions or requirements upon the license which he or she deems necessary.~~

(b) A nursery dealer licensed under section 4024 of this title shall pay the following fee for a license:

(1) \$50.00, if the nursery owns or controls:

(A) a nursery of one-half acre or more;

(B) greenhouse space of 25,000 square feet or more; or

(C) retail space of 25,000 square feet or more.

(2) \$20.00 for all other nursery dealers.

(c) Any person soliciting orders for, offering for sale, or distributing nursery stock shall have in his or her possession a copy of the nursery license required under subsection (a) of this section, which he or she shall show upon demand to prospective buyers or the secretary.

Sec. 4. 6 V.S.A. § 4025 is amended to read:

§ 4025. SHIPMENTS BY NURSERY DEALERS TO BE ACCOMPANIED
BY INSPECTION CERTIFICATES

Whenever a nursery dealer or nursery grower licensed under this chapter ships or delivers any nursery stock grown within this state, he or she shall include with each shipment a copy of the inspection certificate issued by the secretary, or an approved facsimile, stating that the nursery dealer or nursery grower is licensed and has been inspected and approved as required by this chapter and the nursery stock is believed to be free from injurious pests or plant diseases.

Sec. 5. 6 V.S.A. § 4027 is amended to read:

§ 4027. DISEASED OR INFESTED STOCK; STOP-SALE; DESTRUCTION

(a) Only sound, healthy nursery stock which will maintain its vigor shall be offered for sale. Offering for sale stock which is diseased or infested with injurious pests is a violation of this chapter. Whenever the secretary has reason to believe that any nursery, nursery grower, or nursery dealer in the state has produced, introduced, installed, sold, or offered for sale, diseased or infested nursery stock, the secretary shall inspect that nursery. If, upon inspection, the secretary finds any diseased or infested stock, he or she may order the plants, either individually or in blocks, to be:

(1) put on stop-sale;

(2) treated in a particular manner; or

(3) destroyed according to the secretary's instructions.

(b) Plants ordered destroyed or placed on stop-sale must be clearly separable from noninfested stock. Any order must be confirmed in writing

within seven days. The writing shall include the reason for action, a description of the nursery stock affected, and any recommended treatment. Stop-sale tags may not be removed except by written permission of the secretary or upon suitable disposal of the infested plants as determined by the secretary.

* * *

Sec. 6. 6 V.S.A. § 4028 is amended to read:

§ 4028. ACCESS TO RECORDS; NURSERY STOCK

A nursery dealer or nursery grower engaged in the sale, distribution, or installation of nursery stock shall:

- (1) provide access for inspection by the secretary of all nursery stock;
- (2) follow appropriate practices so that an adequate inspection of the nursery can be made; and
- (3) maintain for one year records of plant purchases, acquisitions, sales, or other distributions, and make the records available upon request to the secretary for inspection.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 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 Ways and Means agreed to and third reading ordered.

Bill Amended, Read Third Time and Passed

H. 470

House bill, entitled

An act relating to restructuring of the judiciary

Was taken up and pending third reading of the bill, **Rep. Lippert of Hinesburg** moved to amend the bill as follows:

First: By striking Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. 4 V.S.A. § 36 is added to read:

§ 36. COMPOSITION OF THE COURT

Unless otherwise specified by law, when in session a superior court shall consist of one superior, probate, or environmental judge sitting alone.

Second: In Sec. 150, 18 V.S.A. § 7106, before the word “unit” by inserting the words “family division of the superior court in the”

Third: By adding Secs. 150a, 150b, and 150c to read as follows:

Sec. 150a. 18 V.S.A. § 7112 is amended to read:

§ 7112. APPEALS

A patient ~~or student~~ may appeal any decision of the board. The appeal shall be to the family division of the superior court of the county wherein the hospital ~~or school~~ is located. The appeal shall be taken in such manner as the supreme court may by rule provide, except that there shall not be any stay of execution of the decision appealed from.

Sec. 150b. 18 V.S.A. § 7903 is amended to read:

§ 7903. TRANSFERS TO FEDERAL FACILITIES

Upon receipt of a certificate from an agency of the United States that accommodations are available for the care of any individual hospitalized under this part of this title, and that the individual is eligible for care or treatment in a hospital or institution of that agency, the commissioner may cause his transfer to that agency for hospitalization. The ~~district~~ judge who ordered the individual to be hospitalized, and the attorney, guardian, if any, spouse, and parent or parents, or if none be known, an interested party, in that order, shall be notified immediately of the transfer by the commissioner. No person may be transferred to an agency of the United States if he or she is confined pursuant to conviction of any felony or misdemeanor, or if he or she has been acquitted of a criminal charge solely on the ground of mental illness, unless prior to transfer the ~~district~~ judge who originally ordered hospitalization of such person enters an order for the transfer after appropriate motion and hearing. Any person so transferred shall be deemed to be hospitalized by that agency pursuant to the original order of hospitalization.

Sec. 150c. 18 V.S.A. § 8009 is amended to read:

§ 8009. ADMINISTRATIVE DISCHARGE

* * *

(b) The head of the hospital shall discharge a judicially hospitalized patient when the patient is no longer a patient in need of further treatment. When a judicially hospitalized patient is discharged, the head of the hospital shall notify the applicant, the certifying physician ~~and~~, the family division of the superior court, and anyone who was notified at the time the patient was hospitalized.

(c) A person responsible for providing treatment other than hospitalization to an individual ordered to undergo a program of alternative treatment, under ~~sections~~ section 7618 or 7621 of this title, may terminate the alternative treatment to the individual if the provider of this alternative treatment considers him clinically suitable for termination of treatment. Upon termination of alternative treatment, the family division of the superior court shall be so notified by the provider of the alternative treatment.

Fourth: In Sec. 151, 18 V.S.A. § 8010(b), before the word “superior” by inserting the words “family division of the”

Fifth: In Sec. 237, by adding a new subsection (f) to read as follows:

(f) Sec. 17 of this act shall establish probate districts for the November 2, 2010 probate judge election, and for all probate judge elections thereafter. Probate judges in office upon passage of this act shall continue to serve, and probate districts in effect upon passage of this act shall continue to exist, until February 1, 2011.

Sixth: In Sec. 239, subsection (a), after the word “subsection” by striking the words “(b) or (c)” and inserting the words “(b), (c), or (d)”

Seventh: In Sec. 239, by adding a new subsection (d) to read as follows:

(d) Sec. 237(f) of this act and this subsection shall take effect on passage.

Which was agreed to.

Pending third reading of the bill, **Reps. Fisher of Lincoln and Donahue of Northfield** moved to amend the bill as follows:

By striking Sec. 28a in its entirety and inserting in lieu thereof a new Sec. 28a to read as follows:

§ 455. TRANSFER OF PROBATE PROCEEDINGS

(a) Any guardianship action filed in the probate division of the superior court pursuant to chapter 111, subchapter 2, article 1 of Title 14 and any adoption action filed in the probate ~~court~~ division pursuant to chapter 9 of Title 15 may be transferred to the family division of the superior court as provided in this section.

(b) A request to transfer a proceeding under this subsection shall be made prior to the hearing on the merits. The family ~~court~~ division shall order the transfer of the proceeding on motion of a party or on its own motion if it finds that:

(1) the identity of the parties, issues, and evidence are so similar in nature to the parties, issues, and evidence in a proceeding pending in the family court division that transfer of the probate action to the family court division would expedite resolution of the issues or would best serve the interests of justice; or

(2) transfer of the proceedings would serve the best interests of the child or would otherwise best serve the interests of justice.

(c) In any contested case involving guardianship or custody of a child, the probate division shall provide notice of the option to file a motion to transfer under subsection (b) of this section to all parties.

(d) A proceeding shall not be transferred pursuant to this section unless the court ordering the transfer has communicated with the receiving court regarding the advisability of the transfer.

Thereupon, **Rep. Fisher of Lincoln** asked and was granted leave of the House to withdraw his amendment.

Pending third reading of the bill, **Rep. Kilmartin of Newport City** moved to amend the bill as follows:

By striking Sec. 32 in its entirety and inserting in lieu thereof a new Sec. 32 to read as follows:

Sec. 32. 4 V.S.A. § 601 is amended to read:

§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

(a) A judicial nominating board is created for the nomination of supreme court justices, ~~and superior and district judges,~~ magistrates, the chair of the public service board, and members of the public service board.

(b) The board shall consist of ~~eleven~~ ten members who shall be selected as follows:

(1) ~~The governor shall appoint two members who are not attorneys at law.~~

~~(2)~~ The senate shall elect ~~three~~ five of its members, ~~not all~~ no more than three of whom shall be members of the same party, and only one of whom may be an attorney at law.

~~(3)~~(2) The house shall elect ~~three~~ five of its members, ~~not all~~ no more than three of whom shall be members of the same party, and only one of whom may be an attorney at law.

~~(4) Attorneys at law admitted to practice before the supreme court of Vermont, and residing in the state, shall elect three of their number as members of the board. The supreme court shall regulate the manner of their nomination and election.~~

~~(5)(3) The members of the board appointed by the governor shall serve for terms of two years and may serve for no more than three terms. The members of the board elected by the house and senate shall serve for terms of two years and may serve for no more than three consecutive terms. The members of the board elected by the attorneys at law shall serve for terms of two years and may serve for no more than three consecutive terms. All appointments or elections shall be between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. Members shall serve until their successors are elected or appointed.~~

~~(6)(4) The members shall elect their own chair who will serve for a term of two years.~~

* * *

~~(d) The judicial nominating board shall adopt rules of procedure under chapter 25 of Title 3 which shall establish criteria and standards for the nomination of qualified candidates for judicial appointment including, but not limited to such factors as integrity, legal knowledge and ability, judicial temperament, impartiality, health, experience, diligence, administrative and communicative skills, social consciousness and public service.~~

* * *

Thereupon, **Rep. Kilmartin of Newport City** asked and was granted leave of the House to withdraw his amendment.

Pending third reading of the bill, **Rep. Kilmartin of Newport City** moved to amend the bill as follows:

In Sec. 9, 4 V.S.A. § 37, by striking subsection (b) through subdivision (1) and inserting in lieu thereof the following:

(b) Notwithstanding any other provision of law, the supreme court may promulgate venue rules, subject to review by the legislative committee on judicial rules under chapter 1 of Title 12, which are consistent with the following policies:

(1) Proceedings involving a case should be heard in the unit in which the case was brought, subject to the following exceptions:

(A) in criminal cases, where a defendant shows that he or she will likely be prejudiced unless there is a change in venue; or

(B) in civil cases, where the parties have agreed to a change in venue, or where one of the parties shows that he or she will likely be prejudiced unless there is a change in venue.

Which was disagreed to.

Pending third reading of the bill, **Rep. Kilmartin of Newport City** moved to amend the bill as follows:

First: In Sec. 11, 4 V.S.A. § 73(a), after the words “to reduce delays in that unit.” by inserting the words “The court shall publish the judicial rotation schedule in electronic format and distribute it electronically to attorneys licensed in Vermont.”

Second: In Sec. 11, 4 V.S.A. § 73, by striking subsection (c) in its and inserting in lieu thereof a new subsection (c) to read as follows:

(c) ~~Notwithstanding subsection (b) of this section, the administrative judge may, pursuant to section 21a of this title, specially assign a district court judge to family court to hear matters specified in subsection (b).~~ As necessary to ensure the efficient operation of the superior court, the presiding judge of the unit may specially assign a superior judge assigned to a division in the unit, including the presiding judge, to preside over one or more cases in a different division. As the administrative judge determines necessary for the operation of the superior court throughout the state, and with the approval of the supreme court, the administrative judge may, by agreement of the parties, additionally assign for a specified period of time a superior judge to preside over a particular case, or over a particular judicial proceeding, in all or part of the units in the state.

Rep. Kilmartin of Newport City asked that the question be divided.

Thereupon, the first recommendation of amendment was agreed to and the second recommendation of amendment was disagreed to.

Pending third reading of the bill, **Rep. Kilmartin of Newport City** moved to amend the bill as follows:

First: By adding Sec. 4a to read as follows:

Sec. 4a. PURPOSE

It is the purpose of Sec. 4 of this act to:

- (1) preserve the integrity of the constitutional process of qualifying and appointing judges;
- (2) prevent the judicial branch from allowing the bypass of constitutional and statutory requirements of judicial qualifications;
- (3) prevent conflicts of interest and the appearance of conflicts of interest in a rural state;
- (4) prevent favoritism and the appearance of favoritism by the judiciary to certain members of the bar appointed to serve as judges without the governor's appointment and confirmation by the senate;
- (5) prevent the retention process from being compromised;
- (6) prevent the diversion of resources appropriated by the general assembly from their intended purpose; and
- (7) further the constitutional requirement of the judiciary to fulfill its role and function through personnel qualified and authorized by the constitution and statute to exercise judicial functions.

Second: In Sec. 4, 4 V.S.A. § 22, by striking subsection (b) in its and inserting in lieu thereof a new subsection (b) to read as follows:

(b) The administrative judge may appoint and assign a member of the Vermont bar residing within the state of Vermont to serve temporarily as:

- (1) an acting judge in a district, family, environmental, or a small claims matter in superior court; or
- (2) an acting magistrate; or
- (3) an acting hearing officer to hear cases in the judicial bureau.

Pending the question, Shall the bill as offered by Rep. Kilmartin of Newport City? **Rep. Kilmartin of Newport City** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill as offered by Rep. Kilmartin of Newport City? was decided in the negative. Yeas, 32. Nays, 110.

Those who voted in the affirmative are:

Ainsworth of Royalton
Baker of West Rutland
Brennan of Colchester
Canfield of Fair Haven
Consejo of Sheldon

Crawford of Burke
Donaghy of Poultney
Donahue of Northfield
Fagan of Rutland City
Geier of South Burlington

Higley of Lowell
Hubert of Milton
Kilmartin of Newport City
Krebs of South Hero
Larocque of Barnet

Lawrence of Lyndon	Myers of Essex	Shaw of Pittsford
Lewis of Derby	Pearce of Richford	South of St. Johnsbury
Marcotte of Coventry	Peaslee of Guildhall	Turner of Milton
McAllister of Highgate	Perley of Enosburg	Wheeler of Derby
McFaun of Barre Town	Savage of Swanton	Winters of Williamstown
McNeil of Rutland Town	Scheuermann of Stowe	

Those who voted in the negative are:

Acinapura of Brandon	Haas of Rochester	Morrissey of Bennington
Adams of Hartland	Helm of Castleton	Mrowicki of Putney
Ancel of Calais	Hooper of Montpelier	Nease of Johnson
Andrews of Rutland City	Howard of Cambridge	Nuovo of Middlebury
Aswad of Burlington	Howard of Rutland City	O'Brien of Richmond
Atkins of Winooski	Howrigan of Fairfield	Obuchowski of Rockingham
Bissonnette of Winooski	Jerman of Essex	O'Donnell of Vernon
Bohi of Hartford	Jewett of Ripton	Olsen of Jamaica
Botzow of Pownal	Johnson of South Hero	Partridge of Windham
Branagan of Georgia	Johnson of Canaan	Pellett of Chester
Bray of New Haven	Keenan of St. Albans City	Peltz of Woodbury
Browning of Arlington	Kitzmiller of Montpelier	Poirier of Barre City
Burke of Brattleboro	Klein of East Montpelier	Potter of Clarendon
Cheney of Norwich	Koch of Barre Town	Pugh of South Burlington
Clark of Vergennes	Komline of Dorset	Ram of Burlington
Clarkson of Woodstock	Krawczyk of Bennington	Reis of St. Johnsbury
Clerkin of Hartford	Lanpher of Vergennes	Rodgers of Glover
Condon of Colchester	Lenes of Shelburne	Shand of Weathersfield
Conquest of Newbury	Leriche of Hardwick	Sharpe of Bristol
Corcoran of Bennington	Lippert of Hinesburg	Smith of Mendon
Courcelle of Rutland City	Lorber of Burlington	Spengler of Colchester
Davis of Washington	Macaig of Williston	Stevens of Waterbury
Deen of Westminster	Maier of Middlebury	Stevens of Shoreham
Devereux of Mount Holly	Malcolm of Pawlet	Sweaney of Windsor
Dickinson of St. Albans Town	Manwaring of Wilmington	Taylor of Barre City
Donovan of Burlington	Marek of Newfane	Till of Jericho
Edwards of Brattleboro	Martin of Springfield	Toll of Danville
Emmons of Springfield	Martin of Wolcott	Townsend of Randolph
Evans of Essex	Masland of Thetford	Waite-Simpson of Essex
Fisher of Lincoln	McDonald of Berlin	Webb of Shelburne
Frank of Underhill	Milkey of Brattleboro	Weston of Burlington
French of Shrewsbury	Miller of Shaftsbury	Wilson of Manchester
French of Randolph	Minter of Waterbury	Wizowaty of Burlington
Gilbert of Fairfax	Mitchell of Barnard	Wright of Burlington
Grad of Moretown	Mook of Bennington	Young of St. Albans City
Greshin of Warren	Moran of Wardsboro	Zenie of Colchester
	Morley of Barton	Zuckerman of Burlington

Those members absent with leave of the House and not voting are:

Audette of South Burlington	Head of South Burlington	Heath of Westford
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Larson of Burlington
McCullough of Williston

Orr of Charlotte
Smith of Morristown

Pending third reading of the bill, **Rep. Young of St. Albans City** moved to amend the bill as follows:

First: By striking Sec. 35 in its entirety and inserting in lieu thereof a new Sec. 35 to read:

Sec. 35. 4 V.S.A. § 605 is amended to read:

§ 605. POLITICAL ACTIVITY BY JUDGES PROHIBITED

(a) Superior ~~and district~~, probate, and assistant judges shall not make any contribution to or hold any office in a political party or organization or take part in any political campaign.

(b) Candidates for the office of probate or assistant judge shall not participate in a primary election nor receive the nomination of any political party.

Second: By striking Sec. 137 in its entirety

Thereupon, **Rep. Young of St. Albans City** asked and was granted leave of the House to withdraw his amendment.

Pending third reading of the bill, **Rep. Clark of Vergennes** moved to amend the bill as follows:

By adding a new Sec. 238b to read as follows:

Sec. 238b. 12 V.S.A. § 1604 is amended to read:

§ 1604. VALUE OF PROPERTY; OWNER AS COMPETENT WITNESS

The owner of real or personal property shall be a competent witness to testify as an expert as to the value thereof, as to the reasons for that value, and as to the property's comparability to other similar properties with which the owner is familiar.

Rep. Grad of Moretown raised a Point of Order that the amendment was not Germane to the bill, which Point of Order the Speaker ruled well taken in that the bill deals with court reorganization not judicial procedures.

Thereupon the bill was read a third time and passed.

Action on Bill Postponed**H. 783**

House bill, entitled

An act relating to miscellaneous tax provisions

Was taken up and pending second reading of the bill, on motion of **Rep. Ancel of Calais**, action on the bill was postponed until the next legislative day.

Adjournment

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