

Journal of the Senate

TUESDAY, FEBRUARY 2, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Duane Somero of South Burlington. Lisa Bixler served as the interpreter.

Pledge of Allegiance

Pages Clara Emlen and Sam Biondolillo then led the members of the Senate in the pledge of allegiance.

Bill Referred to Committee on Appropriations

S. 268.

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to the building bright futures council.

Rules Suspended; Bill Committed

Appearing on the Calendar for notice, on motion of Senator Mullin the rules were suspended and Senate bill entitled:

S. 110. An act relating to sheltering livestock.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Judiciary, Senator Mullin moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Agriculture with the report of the Committee on Judiciary *intact*,

Which was agreed to.

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 46. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 5, 2010, it be to meet again no later than Tuesday, February 9, 2010.

Bill Passed

Senate bill of the following title was read the third time and passed:

S. 196. An act relating to processing the application for motor vehicle emergency light permits.

Proposals of Amendment; Third Reading Ordered

H. 534.

Senator Bartlett, for the Committee on Appropriations, to which was referred House bill entitled:

An act relating to fiscal year 2010 budget adjustment.

Reported recommending that the Senate propose to the House to amend the bill as follows:

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

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

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

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

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

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

Sec. D.104. TRANSFER OF TOBACCO TRUST FUNDS

(a) Notwithstanding 18 V.S.A. § 9502(a)(3) and (4), the actual amount of investment earnings of the tobacco trust fund at the end of fiscal year 2010 and any additional amount necessary to ensure the balance in the tobacco litigation

settlement fund at the close of fiscal year 2010 is not negative, shall be transferred from the tobacco trust fund to the tobacco litigation settlement fund in fiscal year 2010.

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

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

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

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

Sec. 82. REALLOCATION OF FUNDS

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

(b) Of the funds appropriated in Sec. 219(c) of No. 65 of the Acts of 2007 as amended by Sec. 64 of No. 90 of the Acts of 2008 (DeptID 7110010150), and Sec. 233a(a)(6)(B) of No. 65 of the Acts of 2007 (DeptID 7110890702), and Sec. 220 of No. 215 of the Acts of 2006 as amended by Sec. 361 of No. 65 of the Acts of 2007 (DeptID 7110010170); any amounts in the above appropriations that are deemed unencumbered through award recapture by the commissioner of finance and management shall be available for municipal planning grants in fiscal year 2010.

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

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

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

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

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

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

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

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

§ 167. PUBLIC FUNDS INVESTIGATION SPECIAL FUND

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

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

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

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

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

Sec. 112a. EMERGENCY HOUSING FUNDING

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

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

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

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

Sec. 112b. VERMONT STATE HOSPITAL; CANTEEN PLAN

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

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

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

Bills Amended; Third Readings Ordered**S. 187.**

Senator Brock, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to municipal financial audits.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. § 1690 is amended to read:

§ 1690. CERTIFIED OR PUBLIC ACCOUNTANT TO AUDIT TOWN ACCOUNTS; WARNING; FORM

(a) The ~~selectmen~~ legislative body of a city, town, and the trustees of an or incorporated village may, ~~and upon~~ upon its own motion contract with a public accountant, licensed in this state, to perform an annual financial audit of all funds of the town; or upon petition in writing of legal voters equal to five percent of the legal voters of the town or village, the legislative body shall, insert in the warning for any annual town or village meeting, or in the warning for a special town or village meeting, which shall be called upon such petition, an article in substantially the following form:

"To see if the [city, town, or village] will vote to instruct the ~~selectmen or trustees~~ [legislative body] to employ a certified public accountant or public accountant to aid the work of the auditors licensed in this state, to perform an annual financial audit of all funds of the [city, town, or village]."

(b) Audits performed by a public accountant under this section shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report on internal control over financial reporting that shall be provided to recipients of the financial statements. When there are material weaknesses or significant deficiencies found in the internal control over financial reporting or the auditor's or public accountant's opinion is qualified, adverse, or disclaimed:

(1) the auditor or public accountant shall present the findings or opinion to the legislative body of the town and explain those material weaknesses or significant deficiencies or his or her opinion at a meeting duly warned for the purpose;

(2) after the audit report is delivered to the legislative body of a municipality, the notice for the next meeting of the legislative body shall also notify the voters of the availability of the audit report and the accompanying report on internal control over financial reporting;

(3) the next published annual report of the town shall include a summary of material weaknesses or significant deficiencies found in the internal controls over financial reporting or a statement that the audit report sets forth an opinion that is qualified, adverse, or disclaimed; and

(4) the legislative body shall post the audit report and the accompanying report on internal control over financial reporting on the municipality's website, if the municipality has a website.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

S. 218.

Senator Cummings, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to voyeurism.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2605 is amended to read:

§ 2605. VOYEURISM

(a) As used in this section:

(1) "Bona fide private investigator or bona fide security guard" means an individual lawfully providing services, whether licensed or unlicensed, pursuant to sections 3151 and 3151a of Title 26.

(2) "Female breast" means any portion of the female breast below the top of the areola.

(3) "Circumstances in which a person has a reasonable expectation of privacy" means circumstances in which a reasonable person would believe that his or her intimate areas would not be visible to the public, regardless of whether that person is in a public or private area. This definition includes circumstances in which a person knowingly disrobes in front of another, but does not expect nor give consent for the other person to photograph, film, or record his or her intimate areas.

(4) "Intimate areas" means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of a person.

(5) "Place where a person has a reasonable expectation of privacy" means:

(A) a place in which a reasonable person would believe that he or she could disrobe in privacy, without his or her undressing being viewed by another; or

(B) a place in which a reasonable person would expect to be safe from unwanted intrusion or surveillance.

(6) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

(7) “View” means the intentional looking upon another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or a device designed or intended to improve visual acuity.

(b) No person shall intentionally view, photograph, film, or record in any format:

(1) the intimate areas of another person without that person’s knowledge and consent while the person being viewed, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy; or

(2) the intimate areas of another person without that person’s knowledge and consent and under circumstances in which the person has a reasonable expectation of privacy.

(c) No person shall ~~disseminate~~ display or disclose to a third party any image recorded in violation of subsection (b), (d), or (e) of this section.

(d) No person shall intentionally conduct surveillance or intentionally photograph, film, or record in any format a person without that person’s knowledge and consent while the person being surveilled, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy within a home or residence. Bona fide private investigators and bona fide security guards engaged in otherwise lawful activities within the scope of their employment are exempt from this subsection.

(e) No person shall intentionally photograph, film, or record in any format a person without that person’s knowledge and consent while that person is engaged in a sexual act as defined in section 3251 of this title.

(f) This section shall apply to a person who intentionally views, photographs, films, or records the intimate areas of a person as part of a security or theft prevention policy or program at a place of business.

~~(f)~~(g) This section shall not apply to:

(1) a law enforcement officer conducting official law enforcement activities in accordance with state and federal law; or

(2) official activities of the department of corrections, a law enforcement agency, the agency of human services, or a court for security purposes or during the investigation of alleged misconduct by a person in the custody of the department of corrections, a law enforcement agency, the agency of human services, or a court.

~~(g)~~(h) This section is not intended to infringe upon the freedom of the press to gather and disseminate news as guaranteed by the First Amendment to the Constitution of the United States.

~~(h)~~(i) It shall be an affirmative defense to a violation of subsection (b) of this section that the defendant was a bona fide private investigator or bona fide security guard conducting surveillance in the ordinary course of business, and the violation was unintentional and incidental to otherwise legal surveillance. However, an unintentional and incidental violation of subsection (b) of this section shall not be a defense to a violation of subsection (c).

~~(i)~~(j) For a first offense, a person who violates subsection (b) ~~or~~ (d), or (e) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both. For a second or subsequent offense, a person who violates subsection (b) ~~or~~ (d), or (e) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both. A person who violates subsection (c) of this section shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Third Reading Ordered

S. 278.

Senate committee bill entitled:

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

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Message from the House No. 15

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 220. House concurrent resolution in memory of Dale Long.

H.C.R. 221. House concurrent resolution congratulating Bellows Falls Union High School former girls' basketball coach Jayne Barber on her induction into the New England Basketball Hall of Fame.

H.C.R. 222. House concurrent resolution congratulating the 2009 Rutland Gift-of-Life Marathon.

H.C.R. 223. House concurrent resolution recognizing Wilmer Brandt's commitment to preserving the natural world and promoting social justice as he celebrates his 90th birthday.

H.C.R. 224. House concurrent resolution congratulating the Rice Memorial High School Green Knights 2009 Division III championship field hockey team.

H.C.R. 225. House concurrent resolution congratulating the 2009 Springfield High School Cosmos Division II championship boys' soccer team.

H.C.R. 226. House concurrent resolution congratulating the students and staff of Hartford High School on their creation of the High Five mural.

H.C.R. 227. House concurrent resolution congratulating Bob Kinzel on his receipt of the 2009 Vermont Association of Broadcasters' Distinguished Service Award.

H.C.R. 228. House concurrent resolution congratulating Ray Kimball on his being named a 2009 recipient of the Vermont Association of Broadcasters' Alan Noyes Community Service Award.

H.C.R. 229. House concurrent resolution congratulating Tim Johnson on his receipt of the Vermont Association of Broadcasters' Distinguished Service Award.

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

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 220.

House concurrent resolution in memory of Dale Long.

By Representative Obuchowski and others,

By Senators Shumlin and White,

H.C.R. 221.

House concurrent resolution congratulating Bellows Falls Union High School former girls' basketball coach Jayne Barber on her induction into the New England Basketball Hall of Fame.

By Representative Obuchowski and others,

By Senators Carris, Flory and Mullin,

H.C.R. 222.

House concurrent resolution congratulating the 2009 Rutland Gift-of-Life Marathon.

By Representative Ancel,

H.C.R. 223.

House concurrent resolution recognizing Wilmer Brandt's commitment to preserving the natural world and promoting social justice as he celebrates his 90th birthday.

By Representative Till and others,

By Senators Ashe, Flanagan, Lyons, Miller, Racine and Snelling,

H.C.R. 224.

House concurrent resolution congratulating the Rice Memorial High School Green Knights 2009 Division III championship field hockey team.

By Representative Emmons and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 225.

House concurrent resolution congratulating the 2009 Springfield High School Cosmos Division II championship boys' soccer team.

By Representative Bohi and others,
By Senators Campbell, McCormack and Nitka,

H.C.R. 226.

House concurrent resolution congratulating the students and staff of Hartford High School on their creation of the High Five mural.

By Representative Obuchowski and others,

H.C.R. 227.

House concurrent resolution congratulating Bob Kinzel on his receipt of the 2009 Vermont Association of Broadcasters' Distinguished Service Award.

By Representative Obuchowski and others,
By Senators Campbell, McCormack and Nitka,

H.C.R. 228.

House concurrent resolution congratulating Ray Kimball on his being named a 2009 recipient of the Vermont Association of Broadcasters' Alan Noyes Community Service Award.

By Representative Obuchowski and others,
By Senators Shumlin and White,

H.C.R. 229.

House concurrent resolution congratulating Tim Johnson on his receipt of the Vermont Association of Broadcasters' Distinguished Service Award.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o'clock in the afternoon on Wednesday, February 3, 2010.