

Journal of the Senate

Thursday, April 22, 2010

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the time for convening of the Senate having been set at eight o'clock and thirty minutes, the Senate was called to order by David A. Gibson, Secretary of the Senate.

Presiding Officer Elected

Thereupon, pursuant to the provisions of Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the Senate proceeded to the election of an acting President *pro tempore* to preside.

Nominations being in order, Senator Mazza nominated Senator John F. Campbell to be acting President *pro tempore*. Senator Hartwell seconded the nomination.

There being no further nominations, on motion of Senator Mazza, the nominations were closed, and the Assistant Secretary was instructed to cast one ballot for Senator John F. Campbell to serve as presiding officer until the return of the President or the President *pro tempore*.

Senator Campbell Assumes the Chair

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Consideration Postponed

Senate resolution entitled:

S.R. 17.

Senate resolution relating to problems associated with underage consumption of alcohol.

Was taken up.

Thereupon, without objection consideration of the resolution was postponed until the next legislative day.

Proposal of Amendment; Consideration Postponed**H. 578.**

House bill entitled:

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety.

Was taken up.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 3 to read as follows:

Sec. 3. CERTIFICATION OF LAW ENFORCEMENT OFFICERS

(a) The General Assembly finds that because the Vermont Police Academy requires candidates for certification as a full-time law enforcement officer to undergo 16 weeks of extensive physical training in addition to meeting academic requirements, older individuals or individuals with minor physical disabilities who are otherwise exceptionally qualified to discharge law enforcement duties are precluded from obtaining full-time certification and thus full-time employment as a law enforcement officer. While other states and jurisdictions have left physical training requirements to the hiring law enforcement agencies, the Vermont Criminal Justice Training Council has continued the physical training requirements, extending the cost and length of the basic training program, even though the hiring law enforcement agency already has selected and employed the candidates who seek full-time certification.

(b) The executive director of the Vermont Criminal Justice Training Council, the attorney general or designee, a designee of the Department of Sheriffs and State's Attorneys who does not serve on the Vermont Criminal Justice Training Council, the defender general or designee, the executive director of the Human Rights Commission or designee, and a Vermont constable selected by the chair of the trustees of the Vermont League of Cities and Towns shall make recommendations regarding the advisability of granting full-time certification to law enforcement officers who have been certified as part-time officers for at least the past ten years and who have been employed a total of at least 5,000 hours as an officer discharging law enforcement duties during that period. The chair of the committee shall be the attorney general or his or her designee. The committee shall report its findings and recommendations to the House and Senate Government Operations and Judiciary Committees no later than January 15, 2011.

And by renumbering the remaining section to be Sec. 4.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Illuzzi?, without objection on motion of Senator Shumlin consideration of the bill was postponed to the next legislative day.

Bills Passed in Concurrence

House bills of the following titles were severally read the third time and passed in concurrence:

H. 774. An act relating to approval of amendments to the charter of the city of South Burlington.

H. 775. An act relating to technical changes to the records management authority of the Vermont state archives and records administration.

H. 788. An act relating to approval of amendments to the charter of the town of Berlin.

Consideration Postponed

House bill entitled:

H. 765.

An act relating to establishing the Vermont agricultural innovation authority.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Proposals of Amendment; Bill Passed in Concurrence with Proposals of Amendment

H. 524.

House bill entitled:

An act relating to interference with or cruelty to a guide dog.

Was taken up.

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate proposal of amendment be amended as follows:

First: By adding a new section to be numbered Sec. 3 to read as follows:

Sec. 3. 20 V.S.A. § 3621 is amended to read:

§ 3621. ISSUANCE OF WARRANT TO IMPOUND, ~~DESTROY;~~
COMPLAINT

(a) The legislative body of a municipality may at any time issue a warrant to one or more police officers or constables, ~~or~~ pound keepers, or elected or appointed animal control officers, directing them to proceed forthwith to destroy in a humane way or cause to be destroyed in a humane way impound all dogs or wolf-hybrids within the town or city not licensed according to the provisions of this subchapter, except as exempted by section 3587 of this title, and to enter a complaint against the owners or keepers thereof. A dog or wolf-hybrid impounded by a municipality under this section may be transferred to an animal shelter or rescue organization for the purpose of finding an adoptive home for the dog or wolf-hybrid. If the dog or wolf-hybrid cannot be placed in an adoptive home or transferred to a humane society or rescue organization within ten days, or a greater number of days established by the municipality, the dog or wolf-hybrid may be destroyed in a humane way. The municipality shall not be liable for expenses associated with keeping the dog or wolf-hybrid at the animal shelter or rescue organization beyond the established number of days.

(b) A municipality may waive the license fee for the current year upon a showing of current vaccinations and financial hardship. In the event of waiver due to financial hardship, the state shall not receive its portion of a dog license fee.

Second: By adding a new section to be numbered Sec. 4 to read as follows:

Sec. 4. 13 V.S.A. § 351(4) is amended to read:

(4) “Humane officer” or “officer” means any law enforcement officer as defined in 23 V.S.A. § 4(11), auxiliary state police officers, deputy game wardens, humane society officer, animal control officer elected or appointed by the legislative body of a municipality, employee or agent, local board of health officer or agent, or any officer authorized to serve criminal process.

And that after passage the title of the bill be amended to read:

“An act relating to interference with or cruelty to a guide dog, warrants to impound a dog or wolf-hybrid, and the definition of ‘humane officer’.”

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Campbell and Miller moved that the Senate proposal of amendment be amended by adding three new sections to be numbered Secs. 3, 4, and 5 to read as follows:

Sec. 3. FINDINGS

The general assembly finds that:

(1) Cebus appella monkeys, commonly known as capuchin monkeys, are used, when highly trained, by the group Helping Hands: Monkey Helpers for the Disabled, a national nonprofit based in Boston, to serve people who are paralyzed, suffer from multiple sclerosis, are quadriplegic, or have other severe spinal cord injuries or mobility impairments by providing assistance with daily activities.

(2) By breeding these monkeys in captivity, raising, and specially training these monkeys to act as live-in companions over the course of 20–30 years, these groups provide independence and companionship to the people they help.

(3) Many states allow capuchin monkeys to be imported, by permit, for purposes of this service. States that have laws exempting the monkeys from their wild animal importation ban include Georgia and California.

(4) According to Helping Hands: Monkey Helpers for the Disabled, their monkeys reside in a closed colony under tight security in a specialized facility in the Boston area. The monkeys do not have exposure to other non-colony primates. The monkeys receive thorough and comprehensive veterinary care while at the training center and after placement, including regular testing for tuberculosis and intestinal parasites. No recipients or care giver has been injured or contracted an infectious disease from these monkeys.

(5) Helping Hands: Monkey Helpers for the Disabled's monkeys are New World primates which originate in South America. All monkeys are bred specifically for the program and none are taken from the wild. The monkeys are not infected with the well-known pathogens Herpes B or SIV, which are carried exclusively by Asian and African (Old World) primates. The capuchin monkeys are significantly smaller and more docile than Old World primates.

Sec. 4. PILOT PROGRAM FOR IMPORT OF ASSISTANCE ANIMALS; CAPUCHIN MONKEYS

(a) A pilot program, for importing highly trained Cebus appella monkeys into Vermont, is established for the purpose of providing animals for assistance of persons with a permanent disability or disease.

(b) The commissioner shall issue a permit under 10 V.S.A. § 4709 to two different Vermont residents for the import into the state of an animal in the genus *Cebus appella* (capuchin monkeys), provided that the applicant for the permit establishes that:

(1) the applicant has a permanent disability or disease which interferes with the person's ability to perform one or more routine daily living activities;

(2) the animal for which the permit is to be issued has been trained to assist the person in performing his or her daily living activities;

(3) the animal will be humanely treated and will not present a threat to public health or safety;

(4) the animal for which the permit is sought is the only wild animal to be possessed by that person;

(5) the applicant does not have a history of animal cruelty under chapter 8 of Title 13;

(6) the animal is being provided by a nonprofit charity or organization dedicated to providing animals for assistance of persons with permanent disability or disease; and

(7) the applicant provides an official health certificate from a veterinarian licensed in the state of the animal's origin certifying that the animal is free of visible signs of infections or contagious or communicable disease.

(c) An animal imported under a permit issued under this section shall:

(1) be treated humanely; and

(2) be kept only in the residence of the permittee except as necessary for veterinary services.

(d) When transported into the state, an animal imported under a permit issued under this section shall be transported in a U.S. Department of Agriculture-approved animal carrier.

(e) When an animal imported under a permit issued under this section is no longer in service to the applicant, the animal shall be returned within seven days of the end of service to the nonprofit charity or organization that provided the animal.

(f) Report. On or before January 15, 2014, the commissioner shall report to the senate committee on judiciary on all aspects of the pilot program's implementation, including public health and safety concerns, and on recommendations for legislative proposals or permitting processes, if any.

Sec. 5. EFFECTIVE DATE

This act shall take effect upon passage.

Which was agreed to.

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

Proposal of Amendment; Bill Passed in Concurrence with Proposals of Amendment

H. 790.

House bill entitled:

An act relating to capital construction and state bonding.

Was taken up.

Thereupon, pending third reading of the bill, Senator Scott moved that the Senate proposal of amendment be amended in Sec. 23 by striking out subdivision (25) in its entirety and inserting in lieu thereof a new subdivision (25) to read as follows:

(25) of the amount appropriated by Sec.1(7) of No. 147 of the Acts of 2005 adj. session (2006) for repairs to Vermont Veterans Home Heat Distribution System: \$7,374.00

Which was agreed to.

Senator Shumlin Assumes the Chair

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate proposal of amendment be amended in Sec. 26 by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) The commissioner of buildings and general services shall work with the town of Windsor to develop a plan for use of state lands adjacent to the southeast state correctional facility in Windsor, and shall consult with the commissioner of forests parks and recreation, the commissioner of corrections, local wildlife conservation groups, and trails and recreation organizations, as they develop the plan. The plan shall describe a mixed use of the area which will result in benefits to the town of Windsor, the region, and the state on a sustainable basis. Proposed uses shall be based on the natural attributes of the area so that for example, agricultural uses may be proposed in sections of prime agricultural soils, forestry uses may be proposed in areas suitable for sustainable tree growth, wildlife habitat is maintained and improved especially

for Vermont species of greatest conservation need, and housing may be proposed to be clustered near recreational uses. On or before January 15, 2011, the commissioner of buildings and general services and the town of Windsor shall jointly present the plan to the senate committee on institutions and the house committee on corrections and institutions.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Campbell?, Senator Campbell requested and was granted leave to withdraw his proposal of amendment.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate proposal of amendment be amended by adding two new sections to be numbered Secs. 41 and 42 to read as follows:

Sec. 41. 30 V.S.A. § 8079 is amended to read:

§ 8079. BROADBAND INFRASTRUCTURE; INVESTMENT

(a) To achieve the goals established in subsection 8060(b) of this title, the authority is authorized to invest in broadband infrastructure or contract with retail providers for the purpose of making services available to at least 10,000 households or businesses in target communities where such services are currently unavailable or to upgrade services in underserved business districts, as determined by the authority. For the purposes of this section, target communities shall not be considered unserved if a broadband provider has a legally binding commitment to provide service to those locations or a provider has received a broadband stimulus grant to provide service to those locations.

(b) To accomplish the purpose of this section, the authority shall publish a request for proposals for ~~any or~~ all of the following options for the purpose of providing broadband coverage to 100 percent of Vermont households and businesses within target communities: (1) the construction of physical broadband infrastructure, to be owned by the authority; (2) initiatives by public-private partnerships or retail vendors; or (3) programs that provide financial incentives to consumers, in the form of rebates for up to 18 months, for example, to ensure that providers have a sufficient number of subscribers. ~~Before publication, a copy of all requests for proposals shall be provided to the senate committee on finance and the house committee on commerce and economic development, and shall be approved by the joint fiscal committee~~ The authority shall select proposals for target communities that best achieve the objective stated in subsection (a) of this section, consistent with the criteria listed in subsections (c) and (d) of this section.

(c) ~~Criteria. In developing the criteria which will govern the requests for proposals regarding the expenditure of the appropriations contained in S.288 and H. 790 as enacted in the 2010 legislative session, and to the extent consistent with the objectives set forth in subsection (a) of this section, the authority shall strive to achieve~~ Any request for proposals developed under this section shall include the following requirements:

(1) ~~Require the use of current generation infrastructure, such as fiber optic cable where cable is used, or otherwise appropriate, and technology which is considered state of the art by the telecommunications industry~~ The technology and infrastructure used by a telecommunications provider participating in a project pursuant to this section shall support the delivery of services with download speeds equal to or greater than three megabits per second and upload speeds equal to or greater than two megabits per second.

(2) ~~Require that any infrastructure~~ Infrastructure owned and leased by the authority shall be available for use by as many telecommunication providers as the technology will permit to avoid the state from establishing a monopoly service territory for one provider.

(d) The authority shall review proposals and award contracts based upon the price, quality of services offered, positive experience with infrastructure maintenance, retail service delivery, and other factors determined to be in the public interest by the authority. In selecting target communities, the authority shall consider to the extent possible:

(1) the proportion of homes and businesses in those communities without access to broadband service and without access to broadband service meeting the minimum technical service characteristic objectives established under section 8077 of this title;

(2) the level of adoption of broadband service by residential and business users within the community;

(3) opportunities to leverage or support other sources of federal, state, or local funding for the expansion or adoption of broadband service;

(4) the number of potential new subscribers in each community and the total level of funding available for the program; and

(5) the geographic location of selected communities and whether new target communities would further the goal of bringing broadband service to all regions of the state.

(6) Pending grant and loan applications for the expansion of broadband service filed with the U.S. Department of Commerce and with the broadband

initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, which will be awarded no later than October 1, 2010.

(e) To the extent any funds appropriated by the general assembly are rendered unnecessary for the purpose of reaching unserved Vermonters due to a successful application to the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, such funds shall be placed in reserve by the authority to be used first to achieve 100-percent coverage pursuant to chapter 91 of Title 30 and, once that is achieved, to then deliver fiber-quality service to Vermont's public facilities, regional business hubs, and anchor businesses and institutions.

(f) Beginning July 1, 2010, the authority may invest up to \$500,000.00 for upgrades in broadband services in underserved business districts, as defined by the authority.

Sec. 42. No. 78 of the Acts of 2010, Sec. 4, subsection (b), is amended to read:

(b) No portion of the appropriation made in subsection (a) of this section shall be encumbered or disbursed until a detailed itemization of the specific manner in which the funds shall be spent is ~~presented to and approved by the joint fiscal committee, after obtaining input from~~ submitted to the senate committee on finance, the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development.

And by renumbering the remaining sections of the bill to be numerically correct.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Illuzzi?, Senator MacDonald moved to amend the proposal of amendment of Senator Illuzzi by striking out Sec. 41(b) in its entirety and inserting in lieu thereof a new Sec. 41(b) to read as follows:

(b) To accomplish the purpose of this section, the authority shall publish a request for proposals for ~~any or~~ all of the following options for the purpose of providing broadband coverage to 100 percent of Vermont households and businesses within target communities: (1) the construction of physical broadband infrastructure, to be owned by the authority; (2) initiatives by public-private partnerships or retail vendors; or (3) programs that provide financial incentives to consumers, in the form of rebates for up to 18 months, for example, to ensure that providers have a sufficient number of subscribers. Before publication, a copy of all requests for proposals shall be provided to the senate committee on finance and the house committee on commerce and economic development, and shall be approved by the joint fiscal committee

The authority shall select proposals for target communities that best achieve the objective stated in subsection (a) of this section, consistent with the criteria listed in subsections (c) and (d) of this section.

Which was disagreed to on a roll call, Yeas 11, Nays 16.

Senator McCormack having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Carris, Cummings, Giard, Hartwell, MacDonald, McCormack, Nitka, Racine, Starr, White.

Those Senators who voted in the negative were: Ashe, Bartlett, Brock, Campbell, Choate, Doyle, Flanagan, Flory, Illuzzi, Kitchel, Kittell, Mazza, Miller, Mullin, Scott, Snelling.

Those Senators absent or not voting were: Lyons, Sears, Shumlin (presiding).

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as proposed by Senator Illuzzi?, was decided in the affirmative.

Thereupon, pending third reading of the bill, Senator Campbell moved that the Senate proposal of amendment be amended in Sec. 26 subsection (a) as follows:

First: In the first sentence by striking out the following: “and the commissioner of corrections” and inserting in lieu thereof the following: the secretary of agriculture, food and markets, the commissioner of corrections, local wildlife conservation groups, and trails and recreation organizations

Second: In the third sentence after the following: “areas suitable for sustainable tree growth,” by inserting the following: wildlife habitat is maintained and improved especially for Vermont species of greatest conservation need,

Third: In the last sentence after the following: “shall jointly present the plan to” by inserting the following: the house and senate committees on natural resources and energy,

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment on a roll call, Yeas 26, Nays 2.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Hartwell, Illuzzi, Kitchel, Kittell, MacDonald, Mazza, Miller, Mullin, Nitka, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: McCormack, Racine.

Those Senators absent or not voting were: Lyons, Shumlin (presiding).

Third Reading Ordered

H. 725.

Senator Kittell, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to farmers' markets.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator Kittell moved to amend the bill by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Committees of Conference Appointed

S. 282.

An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

Was taken up. Pursuant to the request of the Senate, the President *pro tempore* announced the appointment of

Senator Kitchel
Senator Scott
Senator Mazza

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

H. 540.

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

Was taken up. Pursuant to the request of the House, the President *pro tempore* announced the appointment of

Senator Mazza
Senator Scott
Senator Kitchel

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

Rules Suspended; Bills Messaged

On motion of Senator Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 282, H.524, H. 774, H. 775, H. 788, H. 790.

Rules Suspended; Action Messaged

On motion of Senator Mazza, the rules were suspended, and the action on the following bill was ordered messaged to the House forthwith:

H. 540.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the morning.