

Journal of the Senate

TUESDAY, APRIL 27, 2010

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

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. 63. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 30, 2010, or Saturday, May 1, 2010, it be to meet again no later than Tuesday, May 4, 2010.

Appointment to Committee of Conference

H. 540.

The President *pro tempore* announced the appointment of

Senator Hartwell

as a replacement for

Senator Mazza

as a member of the committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses upon House bill entitled:

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

Bill Passed in Concurrence with Proposals of Amendment

H. 772.

House bill of the following title was read the third time and passed in concurrence with proposals of amendment:

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

House Proposals of Amendment Concurred In**S. 239.**

House proposals of amendment to Senate bill entitled:

An act relating to retiring outdoor wood-fired boilers that do not meet the 2008 emission standard for particulate matter.

Were taken up.

The House proposes to the Senate to amend the bill as follows:

First: In Sec. 2, 10 V.S.A. § 584, in subdivision (e)(1), after the following: “another” by striking out the following: type of

Second: In Sec. 2, 10 V.S.A. § 584, in subsection (g), after the word “health” by adding the word care and in the phrase “and has resulted or results” by striking out the word “and” and inserting in lieu thereof the word or

Third: In Sec. 2, 10 V.S.A. § 584, in subsection (i), in the first sentence, in the phrase “closer than 100 feet” by striking out the following: “100 feet” and inserting in lieu thereof the following: the setback distance

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

Sec. 3. USE OF FUNDS

The agency of natural resources is authorized to use funds from the American Electric Power Service Corporation Settlement Funds described in 10 V.S.A. § 584(b), for the purposes of this act, as follows:

(1) In fiscal year 2011, the agency is authorized to use \$360,000.00 of these funds, which amount is included in the sum appropriated in Sec. B.710 of H. 789 of the 2009 adjourned session, as enacted; and

(2) In fiscal year 2012, it is the intent of the general assembly that the agency be authorized to use at least \$140,000.00 from that same Settlement Fund source.

And by renumbering the existing Sec. 3 as Sec. 4

Proposals of Amendment; Third Reading Ordered**H. 243.**

Senator Flory, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to the creation of a mentored hunting license.

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

First: In Sec. 1, 10 V.S.A. § 4256, by adding a new subsection (j) to read as follows:

(j) No person shall hunt under this section on privately owned land without first obtaining the permission of the owner or occupant.

Second: By adding two new sections to be numbered Secs. 5 and 6 to read as follows:

Sec. 5. DEPARTMENT OF FISH AND WILDLIFE REPORT ON MENTORED HUNTING

On or before January 15 annually, the commissioner of fish and wildlife shall report to the senate committee on natural resources and energy and the house committee on fish, wildlife and water resources regarding implementation of the mentored hunting license program under 10 V.S.A. § 4256. The report shall include:

(1) The number of mentored hunting licenses issued in the previous calendar year;

(2) The number of deer or other game taken by a mentored hunter in the previous calendar year, if discernible;

(3) A summary of each hunter safety incident or personal injury related to an individual hunting under a mentored license that occurred in the previous calendar year; and

(4) Any recommendation by the commissioner to improve or address implementation of the mentored hunting program, including whether 10 V.S.A. § 4256 should be amended or repealed.

Sec. 6. EFFECTIVE DATE

This act shall take effect January 1, 2011.

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

Senator MacDonald, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate proposal of amendment be amended as proposed by the Committee on Natural Resources?, Senator Sears requested that the question be divided.

Thereupon, the question, Shall the Senate proposal of amendment be amended as *firstly* recommended by the Committee on Natural Resources and Energy?, was disagreed to on a roll call, Yeas 9, Nays 20.

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, Hartwell, Lyons, MacDonald, *McCormack, Racine, Snelling, Starr.

Those Senators who voted in the negative were: Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Flory, Giard, Illuzzi, Kitchel, Kittell, Mazza, Miller, Mullin, Nitka, Scott, Sears, White.

The Senator absent or not voting was: Shumlin (presiding).

*Senator McCormack explained his vote as follows:

“Mr. President:

In the debate on this question the issue of constitutionality has been raised. It would be unfortunate for anyone to interpret either a yes vote or a no vote on the question as a vote for or against the constitution. Rather it is possible for intelligent people of goodwill, acting in goodwill, to develop intelligent interpretations of the constitution that disagree with one another. The disagreement is not over whether or not to conform to the constitution. The argument is over what the constitution means.”

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as *secondly* proposed by the Committee on Natural Resources and Energy?, was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator MacDonald moved that the Senate proposal of amendment be amended in Sec. 1, 10 V.S.A. § 4256, by striking out the first sentence of subsection (a) and inserting in lieu thereof the following:

An individual who holds a mentored hunting license shall be entitled to hunt only when accompanied by an unarmed individual, 21 years of age or older, who holds a valid hunting license under subsection 4254(b) of this title.

Which was disagreed to.

Senator White Assumes the Chair

Thereupon, third reading of the bill was ordered on a roll call, Yeas 28, Nays 1.

Senator Campbell 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, Lyons, MacDonald, Mazza, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr.

The Senator who voted in the negative was: McCormack.

The Senator absent or not voting was: White (presiding).

Senator Shumlin Assumes the Chair

Recess

On motion of Senator Campbell the Senate recessed until the fall of the gavel.

Called to Order

At one o'clock and twenty-five minutes the Senate was called to order by the President *pro tempore*.

Message from the House No. 62

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 considered bill originating in the Senate of the following title:

S. 173. An act relating to technical corrections to the trust laws.

And has passed the same in concurrence.

The House has considered bills originating in the Senate of the following titles:

S. 165. An act relating to eliminating the statute of limitations for felonies.

S. 268. An act relating to the building bright futures council.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the Senate is requested.

The House has considered Senate proposal of amendment to House bill entitled:

H. 783. An act relating to miscellaneous tax provisions.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Ancel of Calais
Rep. Obuchowski of Rockingham
Rep. Condon of Colchester

The House has considered Senate proposal of amendment to House bill entitled:

H. 790. An act relating to capital construction and state bonding.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Emmons of Springfield
Rep. Myers of Essex
Rep. Rodgers of Glover

**Proposals of Amendment; Point of Order; Bill Passed in Concurrence
with Proposals of Amendment**

H. 789.

House bill entitled:

An act making appropriations for the support of government.

Was taken up.

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

First: By adding a new section to be numbered Sec. E. 100.6 to read as follows:

Sec. E 100.6 32 V.S.A. § 704b is added to read:

§704b. PROPOSED REDUCTION IN WORK FORCE WHEN GENERAL ASSEMBLY NOT IN SESSION

(a) The general assembly recognizes that after it adjourns, it may nonetheless be necessary to take significant measures to achieve savings in order to ensure a balanced budget in the general fund due to unknown and

unforeseen circumstances. As a result, if the general assembly is not in session, and the secretary of administration proposes to eliminate, by reduction in force, position elimination, or both, more than one percent of the entire state workforce in one fiscal year, as measured cumulatively from July 1 in that fiscal year, the secretary shall first submit a plan which complies with the standards outlined in subdivision (1) through (7) of this subsection to the joint fiscal committee for its consideration. For the purposes of this section, "entire state workforce" means full-time, permanent, classified and exempt state employees.

(1) The plan shall outline the proportional impacts on exempt employees, classified confidential employees, and all other employee classifications, and shall not have an unduly disproportionate impact on any employee classification;

(2) The plan shall not have an unduly disproportionate effect on any single function, program, service, or benefit;

(3) The plan shall describe how it will minimize any negative impacts of delivery of services to the public, public health, and safety;

(4) The plan shall describe how it will minimize cost impacts on other departments, agencies, or areas of government;

(5) The plan shall describe all proposed reductions in expenditures authorized by a general appropriations or budget adjustment act;

(6) The plan shall describe why other alternatives to the proposed elimination of positions are not utilized in the plan; and

(7) The plan shall reflect the priorities established by the general assembly in law.

(b) A plan developed under subsection (a) of this section shall be filed with the joint fiscal committee and shall not be implemented unless approved by the joint fiscal committee as set forth under this subsection. The joint fiscal committee shall meet within 14 days of the date the secretary's plan is filed, to review and act upon the plan in accordance with the standards in subsection (a) of this section. The committee shall approve or disapprove the plan, and if disapproved, the plan shall not be implemented.

Second: By adding a new section to be numbered Sec. E.100.7 to read as follows:

Sec. E.100.7 STATE MONITORING OF INTERNET USE; FINDINGS; AUTHORITY; AGENCIES COVERED; WEB-CONTENT FILTERING COMMITTEE

(a) Findings. The general assembly finds that:

(1) The Personnel Policies and Procedures Manual (PPPM) for the state of Vermont authorizes limited personal use of Internet services. Although Number 5.6 of the PPPM specifies that “employees shall not use, or attempt to use, State personnel, property, or equipment for their private use or for any use not required for the proper discharge of their official duties,” under Number 11.7 of the PPPM, “that policy has been interpreted to allow a limited degree of personal use of State telephones for private calls when such use meets certain guidelines,” and similar allowances are permitted for Internet, electronic and wireless communication devices and services, and email capabilities.

(2) Although the rules for Internet services under Number 11.7 of the PPPM give agencies the right to monitor their systems and the Internet activities of their employees, such right is not unlimited. For example, Rule 10 of Number 11.7 specifies that internet monitoring “may occur in, but is not limited to, circumstances when there is a reason to suspect that an employee is involved in activities that are prohibited by law, violate State policy or regulations, or jeopardize the integrity and/or performance of the computer systems of the State government.” The rule goes on to further specify that “[m]onitoring may also occur in the normal course of network administration and trouble-shooting, or on a random basis using electronic tools designed to monitor Internet usage.”

(3) The Vermont department of information and innovation, pursuant to a directive by the secretary of administration, chose a server-based web activity monitoring and policing software suite, known as Marshall 86, to be implemented statewide. Upon implementation, Marshall 86 has the capability of collecting reports on the usage and durations of usage on every website visited through a state computer, including websites visited for personal use such as e-mail or online banking. According to a memorandum by the commissioner to the senate appropriations committee dated April 22, 2010, Marshall 86 will not collect reports on the content of any site visited. In addition, the software will block users from visiting 28 categories of sites. Mobile electronics, such as laptops, will be installed with client software that will activate a similar blocking feature, irrespective of whether a public or a private internet connection is used.

(4) According to a memorandum by the commissioner to the senate appropriations committee dated April 22, 2010, the human resources staff of each state agency or department will be “responsible for managing the reporting features of” Marshall 86. The memorandum contains no reference to any kind of statewide standard as to how and when the software will be

engaged by such personnel to determine if an employee's internet usage may be in violation of the limited personal use exception contained in the PPPM. Presumably such decisions would be within the broad discretion of the affected agencies and departments.

(5) The general assembly finds that extensive tracking of Internet usage with monitoring software such as Marshall 86, including the generation of reports detailing visits to personal websites for legitimate, lawful, and personal purposes, would be inconsistent with the stated policies in PPPM Numbers 5.6 and 11.7, and inconsistent with fostering a positive, working relationship with the state's workforce.

(6) The potential extensive nature of Internet monitoring by software such as Marshall 86 has not been thoroughly and adequately vetted with regard to the use of and access to reports generated by the software; the implications for records containing privileged or confidential information; the obligation to report and act on information contained in reports generated; and, the repercussions on a state agency's rights and responsibilities under Vermont's public records law, 1 V.S.A. § 315, et seq.

(b) Monitoring Criteria. Web-content filtering software such as Marshall 86 shall not be used to track individual employee usage of the Internet, including websites visited, time spent at each site, the total amount of time spent "surfing" the Internet, and the day and time that each site is visited, unless the agency seeking to monitor that usage has a reason to suspect that an employee is involved in activities that are prohibited by law, violate State policy or regulations, or jeopardize the integrity or performance of the computer systems of the State government; or unless the monitoring is done in the normal course of network administration and trouble-shooting, or on a random basis. The human resources staff of each agency and department shall adopt written policies on computer use not inconsistent with the policies established by the secretary of administration.

(c) Elected Offices. Unless authorized by the elected heads of the following offices, web-content filtering software such as Marshall 86 shall not be deployed on the computers of employees in: the office of the secretary of state, the office of the attorney general, the office of the state auditor, the office of the state treasurer, the office of each state's attorney, and the office of each sheriff. The authorization, if granted, shall expire every two years and may be renewed only by the elected head of each office. Such offices, however, shall prepare written policies on internet use not inconsistent with state policy.

(d) Legislative and Judicial Branches. Web-content filtering software purchased by the executive branch, such as Marshall 86, shall not be used to monitor content or block websites by the legislative or judicial branches of

government. Those branches may purchase and install monitoring and policing software deemed appropriate by them.

(e) Web-content Filtering Committee. The commissioners of human resources and of information and innovation or designees, the director and the chair of the board of trustees of the Vermont state employees association or designees, and one representative of exempt state workers jointly selected by the other four members shall comprise the web-content filtering committee. Administrative support shall be provided by the department of information and innovation. The committee shall decide which sites are blocked based on a list of categories identified by the vendor providing internet monitoring services for the state, such as Marshall 86. The committee shall ensure that the URLs of websites deemed to contain “adult” material not suitable for the workplace are blocked. The committee shall publish its decisions to all state workers who shall be subject to the decisions of the committee.

Third: By adding a new section to be numbered Sec. E.309.18 to read as follows:

Sec. E.309.18 PEDIATRIC PALLIATIVE CARE

(a) The agency of human services shall request a provision allowing Vermont to provide its Medicaid- and SCHIP-eligible children who have life-limiting illnesses with concurrent palliative services and curative care, either as part of its renewal of the state’s Global Commitment for Health Medicaid Section 1115 waiver or as an amendment following renewal.

Fourth: In Sec. E.317(a) by striking out the word “juvenile”

Fifth: By striking out Sec. E.318 in its entirety and inserting in lieu thereof a new Sec. E.318 to read as follows:

Sec. E.318 CHILD CARE ELIGIBILITY; PROCESSING

(a) Until February 1, 2011, the department for children and families shall continue to contract with community agencies for the determination of financial eligibility for the child care services program established in 33 V.S.A. § 3212. Between February 1, 2011 and June 30, 2011, the department for children and families shall continue to contract with community agencies to support families and child care providers with eligibility and payment needs so they can effectively and efficiently navigate the new system during the transition period and beyond.

(b) Before February 1, 2011, the department for children and families shall work with the community agencies to apply technology in a manner that most appropriately balances centralized services with community-based services so

that these services will most efficiently and effectively address the needs of families and child care providers.

Sixth: By adding a new section to be numbered Sec. E.329.1 to read as follows:

Sec. E.329.1 Sec. E.308.1 of No. 1 of the Acts of 2009 (Special Session) is amended to read:

Sec. E.308.1 FISCAL YEAR 2010 NURSING HOMES; HIT INCENTIVES

(a) The By fiscal year 2014, the division of rate setting shall examine the need to provide an incentive or rate adjustment by rule to nursing homes to install electronic medical records in order to improve quality of care by avoiding medical errors and to achieve savings in health care costs through streamlined administration. The incentive or rate adjustment shall be in addition to any current adjustment for capital costs. The incentive or rate adjustment shall be available to nursing homes that have installed electronic medical records prior to the adoption of the rule. In examining the need for an incentive or rate adjustment, the division shall consider the availability and likelihood of federal funding opportunities to achieve the intended purpose of this section.

Seventh: In Sec. E.605 by inserting a new subsection (d) to read as follows:

(d) The commission on higher education funding shall review the responsibilities and funding sources for the Vermont Student Assistance Corporation (VSAC) as its allowable activities under federal law change in order to determine the appropriate priority for services provided by VSAC. By January 15, 2011, the commission shall report to the general assembly with its recommendations for modifying VSAC's responsibilities and priorities.

Eighth: In Sec. E.803 by striking out subdivision (b)(4) and inserting in lieu thereof a new subdivision (b)(4) to read as follows:

(4) CDBG and other public funds are intended to create and preserve affordable housing for households for income-eligible families, seniors and those with special needs. Limited public funding must focused on these households. Therefore, funding for projects which intend to serve households which exceed the CDBG income limits shall be consistent with the Vermont housing finance agency's qualified allocation plan.

Ninth: In Sec. G.100 by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) This section and Secs. C.100, C.101, C.101.1, C.102, E.100.5, E.100.6 (Proposed Reduction in Work Force), E.100.7 (Web Filtering), E.127.2, E.220.1, E.230, E.230.1, E.309.11 (Medicare One-Time Payment), E.309.12

(Expedited rules for OVHA), E.309.18 (Palliative Care), E.321.4 (Expedited Rules for DCF), E.323 (Repeal Reach Ahead sunset), E.501.1, E.800, E.800.1, E.801.1, E.803.1, and E.810 of this act shall take effect upon passage.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Bartlett on behalf of the Committee on Appropriations?, Senator Bartlett requested and was granted leave to withdraw the *seventh* proposal of amendment.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended in the *first* through *sixth* and *eighth* and *ninth* proposals of amendment?, Senator Brock moved that the *second* proposal of amendment be voted separately.

Which was agreed to.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended in the *first*, *third* through *sixth* and *eighth* and *ninth* proposals of amendment?, were collectively agreed to.

Thereupon, pending third reading of the bill?, Senator Illuzzi moved that the Senate proposal of amendment be amended by adding three new sections to be numbered Secs. E.605.1, E.605.2 and E.605.3 to read as follows:

Sec. E.605.1. VERMONT STUDENT ASSISTANCE CORPORATION;
REPORT

Findings.

(a) The U.S. Congress in March 2010 eliminated the ability of the Vermont Student Assistance Corporation (VSAC) to make new federal education loans, which will result in a substantially reduced workload at VSAC. Between \$200 and \$300 million in fewer loans will need to be processed.

(b) The federal Higher Education Act shifts from lenders like VSAC to institutions of higher education tasks such as the monthly reconciliation of loan accounts, entrance and exit counseling including consumer information relating to loan obligations, and loan counseling.

(c) Colleges and universities across America, as well as the federal government, are staffing up and training existing staff to address the shifting of responsibilities of making new federal education loans. Public institutions of higher education are justifying in part budget increases due to new responsibilities which the federal Higher Education Act places on them.

(d) Although VSAC has engaged in outreach programs for many years, those duties are to various levels duplicated, or will be duplicated, by private and public colleges, universities and high schools across America.

(e) Notwithstanding the major part of its work and revenue disappearing because of the action of the U.S. Congress, VSAC intends to continue its current staffing levels by reducing by up to \$1.3 million the amount of direct student grants and loans to Vermonters.

(f) Although VSAC reports it has eliminated 47 positions from its workforce, reducing the number of employees from 375 to 336, further reductions in force will be necessary as a result of the action taken by the U.S. Congress.

Sec. E.605.2 Vermont student assistance corporation (Sec. B.605, #1110012000)

(a) Of this appropriation, \$25,000 is appropriated from the general fund to the Vermont Student Assistance Corporation to be deposited into the trust fund established in 16 V.S.A. § 2845.

(b) Except as provided in subsection (a) of this section, not less than 100 percent of grants shall be used for direct student aid.

(c) Of state funds available to the Vermont Student Assistance Corporation pursuant to Secs. E.215(a) and B.1100(a)(3)(B) of this act, \$250,000 shall be used for the purposes of 16 V.S.A. § 2856. Any unexpended funds from these allocations shall carry forward for this purpose.

Sec. E.605.3 REPORT

The Vermont student assistance corporation (VSAC) shall file a report with the general assembly by January 15, 2011. The report shall detail VSAC's changing role as a result of the federal Higher Education Act and its plans to reduce spending and adjust staffing levels.

Senator Mazza Assumes the Chair

Which was disagreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. E.605.1 to read as follows:

Sec. E.605.1. VERMONT STUDENT ASSISTANCE CORPORATION;
REPORT

Findings.

(a) The U.S. Congress in March 2010 eliminated the ability of the Vermont Student Assistance Corporation (VSAC) to make new federal education loans, which will result in a substantially reduced workload at VSAC. Between \$200 and \$300 million in fewer loans will need to be processed.

(b) The federal Higher Education Act shifts from lenders like VSAC to institutions of higher education tasks such as the monthly reconciliation of loan accounts, entrance and exit counseling including consumer information relating to loan obligations, and loan counseling.

(c) Colleges and universities across America, as well as the federal government, are staffing up and training existing staff to address the shifting of responsibilities of making new federal education loans. Public institutions of higher education are justifying in part budget increases due to new responsibilities which the federal Higher Education Act places on them.

(d) Although VSAC has engaged in outreach programs for many years, those duties are to various levels duplicated, or will be duplicated, by private and public colleges, universities and high schools across America.

(e) Notwithstanding the major part of its work and revenue disappearing because of the action of the U.S. Congress, VSAC intends to continue its current staffing levels by reducing by up to \$1.3 million the amount of direct student grants and loans to Vermonters.

(f) Although VSAC reports it has eliminated 47 positions from its workforce, reducing the number of employees from 375 to 336, further reductions in force will be necessary as a result of the action taken by the U.S. Congress.

Senator Shumlin Assumes the Chair

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi (re: Sec. E.605.1) Senator Cummings raised a point of order, that the Senate could not consider this proposal of amendment since the Senate had rejected it when it voted not to adopt Senator Illuzzi's first proposal of amendment with respect to Secs. E.605.1, E.605.2 and E.605.3. The President *pro tempore* overruled the point of order, noting that Senate Rule 90 did not apply in that the two proposal of amendment were different questions. The Senate having voted on the proposals to amendment Secs. E.605.1, E.605.2 and E.605.3 as a group, it was permissible to offer a separate amendment on Sec. E.605.1 by itself.

Thereupon, the recurring question, Shall the Senate proposal of amendment be amended as recommended by Senator Illuzzi?, was disagreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. E. 605.3 to read as follows:

Sec. E.605.3 REPORT

The Vermont student assistance corporation (VSAC) shall file a report with the general assembly by January 15, 2011. The report shall detail VSAC's changing role as a result of the federal Higher Education Act and its plans to reduce spending and adjust staffing levels.

Which was agreed to on a roll call, Yeas 29, Nays 0.

Senator Illuzzi 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, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

The Senator absent or not voting was: Shumlin (presiding).

Thereupon, pending third reading, Senator Bartlett, on behalf of the Committee on Appropriations, offered its *seventh* proposal of amendment, relating to Sec. E.605, which was agreed to.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the *second* proposal of amendment of Senator Bartlett, on behalf of the Committee on Appropriations, to strike out subsection (d) in its entirety and by inserting in lieu thereof a new subsection (d) to read as follows:

(d) Legislative and Judicial Branches. Web-content filtering software purchased by the executive branch, such as Marshall 86, shall be used to monitor content or block websites by the legislative or judicial branches of government, only if such use is approved by the legislative and judicial branches. Otherwise, the legislative and judicial branches may purchase and install other monitoring and policing software deemed appropriate by them.

Which was agreed to.

Thereupon, the *second* proposal of amendment of Senator Bartlett, on behalf of the Committee on Appropriations, as amended, was agreed to.

Thereupon, pending third reading of the bill, Senator Racine moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. B.1104 to read as follows:

Sec. B.1104. TRANSFER FROM STABILIZATION RESERVE TO GENERAL FUND

Notwithstanding any other provisions of law, in fiscal year 2011 there is appropriated from the general fund budget stabilization reserve under 32 V.S.A. § 308, to the general fund, the amount of \$20.0 million.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Racine?, Senator Ashe, moved to substitute a proposal of amendment for the proposal of amendment of Senator Racine?, as follows:

By adding a new section to be numbered Sec. B.1104 to read as follows:

Sec. B.1104. TRANSFER FROM STABILIZATION RESERVE TO GENERAL FUND

Notwithstanding any other provisions of law, in fiscal year 2011 there is appropriated from the general fund budget stabilization reserve under 32 V.S.A. § 308, to the general fund, the amount of \$38.0 million less any dollar savings identified in H. 792, the Challenges for Change legislation, at the time the 2009-2010 biennial legislative session adjourns.

Which was disagreed to on a roll call, Yeas 11, Nays 18.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Cummings, Flanagan, Hartwell, Illuzzi, Kittell, MacDonald, McCormack, Racine, Starr, White.

Those Senators who voted in the negative were: Ayer, Bartlett, Brock, Campbell, Carris, Choate, Doyle, Flory, Giard, Kitchel, Lyons, Mazza, Miller, Mullin, Nitka, Scott, Sears, Snelling.

The Senator absent or not voting was: Shumlin (presiding).

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Racine?, Senator Racine requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senators Ashe and Giard moved that the Senate proposal of amendment be amended by adding a new section to be numbered Sec. E.309.19 to read as follows:

Sec. E.309.19. VERMONT NONPROFIT HOSPITAL SERVICE CORP;
VERMONT NONPROFIT MEDICAL CORP; BOARD OF DIRECTORS;
COMPENSATION

The total combined compensation, if any, of the board of directors of any Vermont nonprofit hospital service corporation or Vermont nonprofit medical service corporation in calendar year 2011 shall be no more than 90 percent of the total combined compensation of the board in calendar year 2010.

Senator Campbell Assumes the Chair

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Ashe and Giard?, Senator Brock raised a point of order. Thereupon, pending the ruling of the Chair, Senator Brock withdrew his point of order.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Ashe and Giard?, Senator Ashe requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senator Lyons moved that the Senate proposal of amendment be amended in Sec. E.100.5 by adding a new subsection (b) to read as follows:

(b) It is legislative intent that Challenges for Change Act and H. 792 shall result in creative opportunities for improved program outcomes and savings in the budget. It is also legislative intent that the Challenges for Change process shall not result in cuts to employees and that any changes result in the same or improved services. Any appropriations or Challenges for Change conference committees shall work to ensure that these principles are maintained. The joint fiscal committee and general accountability committee shall work with the administration to ensure that these principles are maintained when the legislature is not in session.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Lyons, Senator Lyons moved to substitute her proposal of amendment as follows:

That the Senate proposal of amendment be amended in Sec. E.100.5 by adding a new subsection (b) to read as follows:

(b) It is legislative intent that Challenges for Change Act and H. 792 shall result in creative opportunities for improved program outcomes and savings in the budget. It is also legislative intent that the Challenges for Change process shall not result in reductions in workforce and that any changes result in the same or improved services. The joint fiscal committee and general

accountability committee shall work with the administration to ensure that these principles are maintained when the legislature is not in session.

Which was agreed to.

Thereupon, the question, Shall the Senate proposal of amendment be amended as recommended by Senator Lyons?, was disagreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment, on a roll call, Yeas 23, Nays 6.

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

Roll Call

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

Those Senators who voted in the negative were: Ashe, Flanagan, Flory, MacDonald, McCormack, Racine.

The Senator absent or not voting was: Shumlin (presiding).

Committees of Conference Appointed

S. 264.

An act relating to stop and hauling charges.

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

Senator Kittell
Senator Starr
Senator Giard

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

H. 759.

An act relating to executive branch fees.

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

Senator Carris
Senator Ayer
Senator McCormack

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

H. 790.

An act relating to capital construction and state bonding.

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

Senator Scott
Senator Mazza
Senator Campbell

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. 264, H. 772, H. 789.

Rules Suspended; Action Messaged

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

H. 759, H. 790.

Rules Suspended; Bill Delivered

On motion of Senator Mazza, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 239.

Senate Resolution Adopted

S.R. 17.

Senate resolution of the following title:

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

Was taken up.

Thereupon, the resolution was read the third time and adopted on a roll call, Yeas 14, Nays 13.

Senator Brock 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, Carris, Choate, Giard, Hartwell, Illuzzi, Kittell, MacDonald, McCormack, Miller, Mullin, Starr, White.

Those Senators who voted in the negative were: Bartlett, Brock, Campbell, Cummings, Doyle, Flory, Kitchel, Lyons, Mazza, Nitka, Racine, Scott, Snelling.

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

Senator Campbell Assumes the Chair**Third Reading Ordered****H. 689.**

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to the Uniform Common Interest Ownership Act.

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 third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered**H. 767.**

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

An act relating to the livestock care standards advisory council.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 6 V.S.A. chapter 64 is added to read:

CHAPTER 64. LIVESTOCK CARE STANDARDS
ADVISORY COUNCIL

§ 791. DEFINITIONS

As used in this chapter:

- (1) "Agency" means the agency of agriculture, food and markets.
- (2) "Council" means the livestock care standards advisory council.

(3) "Livestock" means cattle, calves, sheep, swine, horses, mules, goats, fallow deer, American bison, poultry, and any other animal that can or may be used in and for the preparation of meat, fiber, or poultry products.

(4) "Secretary" means the secretary of agriculture, food and markets.

§ 792. ESTABLISHMENT OF LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

(a) There is established a livestock care standards advisory council for the purposes of evaluating the laws of the state and of providing policy recommendations regarding the care, handling, and well-being of livestock in the state. The livestock care standards advisory council shall be composed of the following members, all of whom shall be residents of Vermont:

(1) The secretary of agriculture, food and markets or his or her designee, who shall serve as the chair of the council.

(2) The state veterinarian.

(3) The following four members appointed by the governor:

(A) A person with knowledge of food safety and food safety regulation in the state who is a representative of an agricultural department of a Vermont college or university.

(B) A representative of the Vermont slaughter industry.

(C) A representative of the Vermont livestock dealer, hauler, or auction industry.

(D) A representative of a local humane society or organization registered with the agency and organized under state law.

(4) The following two members appointed by the committee on committees:

(A) A Vermont resident with experience or expertise in equine husbandry practices or equine management.

(B) A Vermont licensed livestock or poultry veterinarian.

(5) The following two members appointed by the speaker of the house:

(A) An enforcement officer, as defined in 23 V.S.A. § 4, or an animal control officer elected, appointed, or employed by a municipality, provided that the enforcement officer or animal control officer has experience or expertise in investigations regarding livestock care and well-being and provided that no animal control officer receiving compensation from a national humane society or organization may be appointed under this subdivision.

(B) An operator of a Vermont dairy farm.

(b) Members of the board shall be appointed for staggered terms of three years. Except for the chair and the state veterinarian, no member of the council may serve for more than six consecutive years.

(c) With the concurrence of the chair, the council may use the services and staff of the agency in the performance of its duties.

§ 793. POWERS AND DUTIES OF LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

(a) The council shall:

(1) Review and evaluate the laws and rules of the state applicable to the care and handling of livestock. In conducting the evaluation required by this section, the council shall consider the following:

(A) agricultural best management practices;

(B) biosecurity and disease prevention;

(C) animal morbidity and mortality data;

(D) food safety practices;

(E) the protection of local and affordable food supplies for consumers;

(F) the overall health and welfare of livestock species; and

(G) humane transport and slaughter practices.

(2) Submit policy recommendations to the secretary on any of the subject matter set forth under subdivision (1) of this subsection. A copy of the policy recommendations submitted to the secretary shall be provided to the house and senate committees on agriculture. Recommendations may be in the form of proposed legislation.

(3) Meet at least annually and at such other times as the chair determines to be necessary.

(b) The council may engage in education and outreach activities related to the laws and regulations for the care and handling of livestock. The council may accept funds from public or private sources in compliance with 32 V.S.A. § 5.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

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

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

Proposals of Amendment; Third Readings Ordered

H. 281.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to the removal of bodily remains.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 5212b is amended to read:

§ 5212b. UNMARKED BURIAL SITES SPECIAL FUND; REPORTING OF UNMARKED BURIAL SITES

(a) The unmarked burial sites special fund is established in the state treasury for the purpose of protecting, preserving, moving or reintering human remains discovered in unmarked burial sites.

(b) The fund shall be comprised of any monies appropriated to the fund by the general assembly or received from any other source, private or public. Interest earned on the fund, and any balance remaining in the fund at the end of a fiscal year, shall be retained in the fund. This fund shall be maintained by the state treasurer, and shall be managed in accordance with subchapter 5 of chapter 7 of Title 32.

(c) The commissioner of economic, housing and community affairs development may authorize disbursements from the fund for use in any municipality in which human remains are discovered in unmarked burial sites in accordance with a process approved by the commissioner. The commissioner ~~shall~~ may approve any process developed through consensus or agreement of the interested parties, including the municipality, ~~the governor's advisory commission on Native American affairs~~ a Native American group historically based in Vermont with a connection to the remains, and private property owners of private property on which there are known or likely to be unmarked burial sites, and any other appropriate interested parties, provided the commissioner determines that the process is likely to be effective, and includes all the following:

(1) Methods for determining the presence of unmarked burial sites, including archaeological surveys and assessments and other nonintrusive techniques.

(2) Methods for handling development and excavation on property on which it is known that there is or is likely to be one or more unmarked burial sites.

(3) Options for owners of property on which human remains in unmarked burial sites are discovered or determined to be located.

(4) Procedures for protecting, preserving or moving unmarked burial sites and human remains, subject, where applicable, to the permit requirement and penalties of this chapter.

(5) Procedures for resolving disputes.

(d) If unmarked burial sites and human remains are removed, consistent with the process set forth in this section and any permit required by this chapter, there shall be no criminal liability under 13 V.S.A. § 3761.

(e) The funds shall be used for the following purposes relating to unmarked burial sites:

(1) To monitor excavations.

(2) To protect, preserve, move, or reinter unmarked burial sites and human remains.

(3) To perform archaeological assessments and archaeological site or field investigations, including radar scanning and any other nonintrusive technology or technique designed to determine the presence of human remains.

(4) To provide mediation and other appropriate dispute resolution services.

(5) To acquire property or development rights, provided the commissioner of economic, housing and community affairs development determines that disbursements for this purpose will not unduly burden the fund, and further provided the commissioner shall expend funds for this purpose only with the concurrence of the secretary of commerce and community development and after consultation with the legislative bodies of any affected municipality or municipalities.

(6) Any other appropriate purpose determined by the commissioner to be consistent with the purposes of this fund.

(f) ~~The commissioner may adopt rules to carry out the intent and purpose of this section.~~ When an unmarked burial site is first discovered, the discovery shall be reported immediately to a law enforcement agency. If, after

completion of an investigation pursuant to section 5205 of this title, a law enforcement agency determines that the burial site does not constitute evidence of a crime, the law enforcement agency shall immediately notify the state archeologist who may authorize appropriate action regarding the unmarked burial site.

Sec. 2. UNMARKED BURIAL SITE TREATMENT PLAN COMMITTEE

(a) The unmarked burial site treatment plan committee is created to develop procedures for addressing issues relating to known or discovered unmarked burial sites of human remains, including developing treatment plans to be used when an unmarked burial site is discovered on private property. The committee shall be composed of the following nine members:

(1) The commissioner of economic, housing and community development or the commissioner's designee.

(2) The state archeologist or designee.

(3) A representative from the Vermont League of Cities and Towns.

(4) A representative from a Native American group based in Vermont who has experience in handling unmarked burial sites, appointed by the commissioner of economic, housing and community development.

(5) A federal archeologist from the Natural Resources Conservation Service of the U.S. Department of Agriculture.

(6) The U.S. Forest Service, Green Mountain National Forest archeologist.

(7) The director of the University of Vermont consulting archeology program.

(8) A representative from the Vermont Bankers Association Inc.

(9) A representative from the Home Builders and Remodelers Association of Vermont.

(b) The committee shall:

(1) Develop procedures for responding to reports of a discovery of an unmarked burial site. For the purposes of this section "an unmarked burial site" means the location of any interment of human remains, evidence of human remains, including the presence of red ochre, associated funerary objects, or a documented concentration of burial sites, but does not include a cemetery, mausoleum, or columbarium or any other site that is clearly marked as a site containing human remains.

(2) Develop various treatment plans for addressing issues that attend the discovery of an unmarked burial site on private property. A treatment plan is an outline of the process for providing appropriate and respectful treatment of the burial site while considering the rights of the landowner. Each treatment plan shall include one or all of the following:

(A) Methods for determining the presence of an unmarked burial site, including archeological surveys and assessments and other nonintrusive techniques.

(B) Methods for handling development and excavation on property on which there is a known burial site or there is likely to be one.

(C) Options for owners of property on which human remains are discovered or known to be located.

(D) Procedures for protecting, preserving, or moving the burial site and the human remains.

(E) Time frames for implementation of the treatment plan.

(F) Procedures for resolving disputes among stakeholders.

(3) The committee shall issue a written report outlining the procedures and treatment plans to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs on or before January 15, 2011.

Sec. 3. 18 V.S.A. § 5212 is amended to read:

§ 5212. PERMIT TO REMOVE DEAD BODIES

(a) A person desirous of disinterring or removing the body of a human being from one cemetery to another cemetery or to another part of the same cemetery or from a tomb or receiving vault elsewhere shall apply to the ~~town~~ clerk of the ~~town where such~~ municipality in which the dead body is interred or entombed for a removal permit.

(b) An applicant for a removal permit shall publish notice of his or her intent to remove the remains. This notice shall be published for two successive weeks in a newspaper of general circulation in the ~~town~~ municipality in which the body is interred or entombed. The notice shall include a statement that the spouse, child, parent ~~or~~ sibling, or descendant of the deceased, or that the cemetery commissioner or other municipal authority responsible for cemeteries in the municipality may object to the proposed removal by filing a complaint in the probate court of the district in which the body is located as provided in section 5212a of this title.

(c) The ~~town~~ municipal clerk shall issue a removal permit 45 days after the date on which notice was last published pursuant to subsection (b) of this section or, if an objection is made pursuant to section 5212a, upon order of the court.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, a removal permit shall be issued upon application:

(1) when removal is necessary because of temporary entombment; or

(2) to a federal, state, county, or municipal official acting pursuant to official duties; or

(3) if the applicant has written permission to remove the remains from all persons entitled to object under section 5212a of this title.

(e) This section does not apply to:

(1) Unmarked burial sites that are subject to the provisions of subchapter 7 of this chapter.

(2) The removal of "historic remains," which has the same meaning as in subdivision 5217(a)(1) of this title.

Sec. 4. 18 V.S.A. § 5217 is added to read:

§ 5217. REMOVAL OF MARKED HISTORIC REMAINS

(a) As used in this section:

(1) "Historic remains" means remains of a human being who has been deceased for 100 years or more, and the remains are marked and located in a publicly known or marked burial ground or cemetery.

(2) "Public good" means actions that will benefit the municipality and the property where the remains are located.

(3) "Remains" means cremated human remains that are in a container or the bodily remains of a human being.

(4) "Removal" means to transport human remains from one location to another premises.

(b) A person may apply for a removal permit to disinter or remove historic remains by filing an application with the clerk for the municipality in which the historic remains are located. The application shall include all the following:

(1) Identification of the specific location and marking of the remains.

(2) Identification of the specific location in which the remains will be reburied.

(3) The reasons for removal of the remains, including a statement of the public good that will result from the removal.

(c) An applicant for a removal permit shall send notice by first-class mail to all the following:

(1) The cemetery commissioner or other municipal authority responsible for cemeteries in the municipality in which the historic remains are located.

(2) All historical societies located within the municipality in which the historic remains are located.

(3) Any decedent known to the applicant. The applicant shall contact the Vermont Historical Society, the Vermont Old Cemetery Association, the Vermont Cemetery Association, and any veterans' organization operating within the county in which the historic remains are located in order to ascertain the whereabouts of any known descendants.

(d) An objection to the proposed removal of historic remains may be filed by one of the individuals listed in subsection (c) of this section. The objection shall be filed with the probate court for the district in which the historic remains are located and the clerk for the municipality in which the historic remains are located within 30 days after the date the notice was mailed.

(e) If no objection is received within 30 days after the date the notice was last published as required by subsection (c) of this section, the municipal clerk shall issue a removal permit.

(f) If the probate court receives an objection within the 30-day period, the court shall notify the clerk for the municipality in which the historic remains are located and schedule a hearing on whether to allow removal as described in the application.

(g) The probate court, after hearing, shall order the municipal clerk to grant or deny a permit for removal of the historic remains. The court shall consider the impact of the removal on the public good.

(h) The permit shall require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed. All costs associated with the removal shall be paid by the applicant.

Sec. 5. 33 V.S.A. § 2301 is amended to read:

§ 2301. BURIAL RESPONSIBILITY

(a)(1) When a person dies in this state, or a resident of this state dies within the state or elsewhere, and the decedent was a recipient of assistance under Title IV or XVI of the Social Security Act, or nursing home care under Title XIX of the Social Security Act, or assistance under state aid to the aged,

blind or disabled, or an honorably discharged veteran of any branch of the U.S. military forces to the extent funds are available and to the extent authorized by department ~~regulations~~ rules, the decedent's burial shall be arranged and paid for by the department if the decedent was without sufficient known assets to pay for burial. The department shall pay burial expenses ~~when arrangements are made other than by the department to the maximum permitted by its regulations~~ for individuals who meet the requirements of this section in an amount not to exceed a maximum established by rule and shall establish by rule a process for reducing the maximum payment amount by the amount of other assets available to pay for the burial. ~~In any case where other contributions are made, these payments shall be deducted from the amount otherwise paid by the department but in no case is the department responsible for any payment when the person arranging the burial selects a funeral the price of which exceeds the department's maximum.~~ The maximum payment by the department does not preclude the next-of-kin's paying for or receiving contributions to pay for additional disposition expenses.

(2) The department shall notify the directors of all funeral homes within the state and within close proximity to the state's borders of its ~~regulations~~ rules with respect to those services for which it shall ~~make payment~~ pays and the amount of payment authorized for ~~such~~ those services. All payments shall be made directly to the appropriate funeral director. In order to receive payment under this section, the funeral director shall provide the department and the party making the funeral arrangements with an itemized invoice for the specific services that are to be provided at public expense.

(3) As a condition of payment when arrangements are made other than by the department, ~~funeral directors shall be required to do the following:~~

(A) the funeral director shall determine from the person making the arrangements if the decedent was a recipient of assistance or an eligible veteran as specified in subdivision (a)(1) of this section;

(B) ~~If, and if~~ the decedent was such a recipient, give notice to the ~~party~~ person making the arrangements of the department's ~~regulations~~ rules.

(4) If the funeral home director does not advise the person making the arrangements of the department's ~~regulations~~ rules then that person shall not be liable for expenses incurred.

* * *

~~(e) When a person other than one described in subsection (a) or (b) of this section dies in the town of domicile without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department shall reimburse the town up to \$250.00 for expenses incurred.~~

~~(d)~~(c) In all other cases the department shall arrange for and pay up to the maximum amount established by rule for the burial of eligible persons who die in this state or residents of this state who die within the state or elsewhere when ~~such~~ the persons are without sufficient known assets to pay for their burial.

~~(e)~~ [Omitted.]

~~(f)~~ In all cases where the department is responsible for funeral and/or or burial expenses under this chapter, the department shall provide, by rule, the specific services that are to be provided at public expense, and on an itemized basis the maximum price to be paid by the department for each such service.

~~(g)~~(d) For the purpose of this chapter, “burial” means the ~~aet~~ act of final disposition of human remains including interring ~~the human dead~~ or cremating a decedent and the ceremonies directly related to that cremation or interment at the gravesite; and “funeral” means the ceremonies prior to burial ~~of the body~~ by interment, cremation, or other method.

Sec. 6. 20 V.S.A. §§ 1581, 1582, and 1583 are amended to read:

§ 1581. VERMONT VETERANS’ MEMORIAL CEMETERY ~~ADVISORY~~ BOARD

(a) The Vermont veterans’ memorial cemetery ~~advisory~~ board is created to ~~advise the adjutant general on~~ determine all matters relating to the establishment and operation of a Vermont veterans’ memorial cemetery to be known as the Vermont Veterans’ Memorial Cemetery. The board shall consist of:

(1) ~~The commissioner of the department of buildings and general services; adjutant general or designee,~~ who shall serve as chair of the board.

(2) The commissioner of the department of buildings and general services or designee.

(3) One member of the senate ~~who shall be~~ appointed by the senate committee on committees.

~~(3)~~(4) One member of the house ~~who shall be~~ appointed by the house speaker.

~~(4)~~(5) Four individuals who represent veterans or are members of a veterans’ organization, ~~to be~~ appointed by the governor for staggered terms of six years.

~~(5)~~(6) One individual who represents the Vermont granite, Vermont slate, or Vermont marble industry selected by the governor for a six-year term.

(b) The office of the adjutant general shall provide administrative support to the board.

(c) For each meeting, legislative members ~~shall be~~ are entitled to receive compensation and reimbursement for expenses as provided under subsection 406(a) of Title 2.—~~The , and~~ and members representing veterans or from veterans' organizations ~~shall be~~ are entitled to per diem as provided in section 1010 of Title 32 and their necessary and actual expenses.

§ 1582. RULES; DAILY OPERATIONS

(a) At the request of and in consultation with the Vermont veterans' memorial cemetery advisory board ~~may, the department of buildings and general services shall~~ adopt rules under the provisions of chapter 25 of Title 3 relating to acquisition of land, design of the cemetery, its buildings and grave markers, eligibility for burial, and any other matters necessary to establish and maintain the Vermont veterans' memorial cemetery.

(b) Daily operations shall be overseen by the adjutant general.

§ 1583. ADJUTANT GENERAL; POWERS AND DUTIES

(a) The adjutant general, subject to available funds and with the advice and consent of the Vermont veterans' memorial cemetery ~~advisory committee board,~~ shall administer the creation, establishment, operation, and maintenance of the Vermont veterans' memorial cemetery.

* * *

Sec. 7. 18 V.S.A. § 5201 is amended to read:

§ 5201. PERMITS; REMOVAL OF BODIES; CREMATION; WAITING PERIOD; INVESTIGATION INTO CIRCUMSTANCES OF DEATH

(a) Burial transfer permit. A dead body ~~of a person~~ shall not be buried, entombed, or removed ~~from a town,~~ or otherwise disposed of, ~~except as hereinafter provided,~~ without a burial-transit permit issued and signed by ~~the town~~ a municipal clerk, his or her a county clerk, or a deputy clerk for the municipality or unorganized town or gore in which the dead body is located; a funeral director licensed in Vermont; an owner or designated manager of a crematorium licensed in Vermont who is registered to perform removals; or a law enforcement officer.

(1) The town clerk of the town or city municipality shall provide for registering deaths that occur in the town and for issuing burial-transit permits at a time when town the clerks' offices are closed. The town municipal clerk shall appoint annually, within five days after the clerk's election or appointment, one or more deputy registrars deputies for this purpose, and

record the name of the deputy or deputies appointed in the ~~town~~ municipal records and notify the commissioner of health of the names and residences of the deputy or deputies appointed.

(2) The county clerk of a county ~~wherein is situated~~ in which an unorganized town or gore is located shall perform the same duties and be subject to the same penalties as a ~~town~~ municipal clerk in respect to issuing burial-transit permits and registering deaths that occur in an unorganized town or gore within the county.

(3) A funeral director licensed in Vermont or an owner or designated manager of a crematory licensed in Vermont who is registered to perform removals may issue a burial-transit permit for any municipality or unorganized town or gore at any time, including during the normal business hours of a municipal clerk.

(4) After a ~~deputy or law enforcement officer~~ person who issued the permit issues a burial-transit permit is issued, the ~~deputy or officer~~ person who issued the permit shall forward the death certificate or preliminary report and the record of the burial-transit permit ~~issued~~ to the clerk of the town or city municipality, or the clerk of the county, in the case of an unorganized town or gore, where death occurred on the first official working day thereafter.

(5) In cases of death by certain communicable diseases as defined by the ~~board~~ commissioner, the ~~town~~ municipal or county clerk, ~~his or her~~ a deputy registrar, a funeral director, a crematory owner or manager, or a law enforcement officer shall not issue a burial-transit permit except in accordance with instructions issued by the ~~local health officer or the board, which instructions shall be kept on file by the town clerk.~~ A licensed embalmer, funeral director or a funeral director's designee may transfer the body of a deceased person to another town for preparation for burial or cremation but the remains shall be returned to the town in which death occurred within forty-eight hours after such removal, unless a permit for permanent removal has been secured within such period. Such licensed embalmer, funeral director or designee shall leave, in writing, upon forms supplied by the commissioner, the name, address, license number of the embalmer or funeral director and the date and hour such body was delivered, with the institution from which or the person from whom any such body is received commissioner.

(6) A body for which a burial-transit permit has been secured, except one for the body of any person whose death occurred as a result of a communicable disease, as defined by the ~~board~~ commissioner, may be taken through or into another ~~town~~ municipality or unorganized town or gore for funeral services without additional permits from the local health officer or ~~board~~ the commissioner.

(b) No operator of a crematory facility shall cremate or allow the cremation of a dead body until the passage of at least 24 hours following the death of the decedent, as indicated on the death certificate, unless, if the decedent died from a virulent, communicable disease, a department of health rule or order requires the cremation to occur prior to the end of that period. If the attorney general or a state's attorney requests the delay of a cremation based upon a reasonable belief that the cause of death might have been due to other than accidental or natural causes, the cremation of a dead human body shall be delayed, based upon such request, a sufficient time to permit a civil or criminal investigation into the circumstances that caused or contributed to the death.

(c) The person in charge of the body shall not release for cremation the body of a person who died in Vermont until the person in charge has received a certificate from the chief, regional, or assistant medical examiner that the medical examiner has made personal inquiry into the cause and manner of death and is satisfied that no further examination or judicial inquiry concerning it is necessary. Upon request of a funeral director or crematory operator, the chief medical examiner shall issue a cremation certificate after the medical examiner has completed an autopsy. The certificate shall be retained by the crematory for a period of three years. ~~For the certificate, the medical examiner is entitled to~~ The person requesting cremation shall pay the department a fee of \$25.00 ~~payable by the person requesting cremation.~~

(d)(1) For all cremations requested for the body of a person who died outside Vermont, the crematory operator ~~must~~ shall do the following before conducting the cremation:

(A) obtain a permit for transit or cremation;

~~(B) follow the guidelines of the medical examiner or comparable office for the jurisdiction~~ comply with the laws of the state in which the person died, including, ~~to the extent that such waiting period is longer than that imposed by the provisions of subsection (b) of this section, postponing the cremation until the passage of any waiting period imposed by that state; and~~

~~(C) if the state in which the person died issues a medical examiner's permit, obtain a copy of that permit~~ obtaining a copy of a medical examiner's permit if one is required.

(2) No additional approval from the Vermont medical examiner's office ~~shall be~~ is required if compliance with the ~~guidelines~~ laws of the state in which the person died is achieved.

Sec. 8. 18 V.S.A. § 5202 is amended to read:

§ 5202. DEATH CERTIFICATE; DUTIES OF PHYSICIAN AND AUTHORIZED LICENSED HEALTH CARE PROFESSIONAL

(a) The ~~physician~~ licensed health care professional who is last in attendance upon a deceased person ~~during his last illness~~ shall immediately fill out a certificate of death on a form prescribed by the commissioner. For the purposes of this section, a licensed health care professional means a physician, a physician assistant, or an advance practice registered nurse. If ~~he~~ the licensed health care professional who attended the death is unable to state the cause of death, ~~he or she~~ shall immediately notify the physician, if any, who was in charge of the patient's care, ~~who shall to~~ fill out the certificate. If ~~neither physician is able~~ the physician is unable to state the cause of death, the provisions of section 5205 of this title shall apply. The ~~physician~~ licensed health care professional may, with the consent of the funeral director, delegate to ~~said~~ the funeral director the responsibility of gathering data for and filling out all items except the medical certification of cause of death. All entries, except signatures, on the certificate shall be typed or printed. ~~Such forms and shall~~ contain answers to the following questions:

- (1) Was the deceased a veteran of any war?
- (2) If so, of what war?

(b) When death occurs ~~to an admitted patient~~ in a hospital and it is impossible to obtain a death certificate from an attending ~~physician~~ licensed health care professional before burial or transportation, any ~~physician~~ licensed health care professional who has access to the facts and can certify that death is not subject to the provisions of section 5205; of this title may complete and sign a preliminary report of death on a form supplied by the commissioner ~~of health~~. The ~~town~~ municipal or county clerk or ~~his~~ a deputy shall accept this report and issue a burial-transit permit. This preliminary report of death may be destroyed six months after a death certificate has been filed. This does not relieve the attending ~~physician~~ licensed health care professional from the responsibility of completing a death certificate and delivering it to the funeral director within twenty-four hours after death.

~~(c) If a dead body must be removed immediately and a death certificate or preliminary report cannot be obtained, the town clerk, deputy or law enforcement officer may issue a temporary burial-transit permit which shall expire forty eight hours after issuance. This does not relieve the attending physician from the responsibility of completing a death certificate and delivering it to the funeral director within twenty four hours after death. Upon receipt of the death certificate, the funeral director shall apply for and the issuing authority shall issue a burial transit permit to replace the temporary permit.~~

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage, except that Sec. 8 shall take effect on January 1, 2012.

And that the bill title be amended to read as follows:

An act relating to cremation, the treatment of unmarked burial sites, the treatment of marked historic burial sites, the operation of the Vermont Veterans' Memorial Cemetery, and payment for burial of indigent persons.

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

Senator Shumlin Assumes the Chair

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

Thereupon, pending the question, Shall the bill be read the third time?, Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs moved to amend the proposal of amendment of the Committee on Economic Development, Housing and General Affairs by striking out the title change and inserting in lieu thereof the following:

After passage, the title of the bill is to be amended to read:

An act relating to cremation, the treatment of unmarked burial sites, the treatment of marked historic burial sites, the operation of the Vermont Veterans' Memorial Cemetery, death certificates, issuance of burial permits and payment for burial of indigent persons.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

H. 229.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to mausoleums and columbaria.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 5577 is amended to read:

§ 5577. MAUSOLEUM BECOMING UNTENABLE

If, in the opinion of the ~~state board~~ commissioner of health, a mausoleum, vault, crypt, or structure containing one or more deceased human bodies becomes a ~~menace to public health~~ hazard, and the owner or owners ~~thereof of the structure~~ fail to remedy or remove the ~~same~~ hazard to the satisfaction of the ~~state board~~ commissioner of health, the commissioner or a court of competent jurisdiction may order the ~~person, firm or corporation owning such~~ owner of the structure to abate the public health hazard or to remove the body or bodies for interment in some suitable cemetery at the expense of the ~~person, firm or corporation owning such~~ owner of the mausoleum, vault, or crypt. When ~~such person, firm or corporation can not~~ the owner cannot be found ~~in the county where such mausoleum, vault or crypt is located, then such~~ removal and interment shall be at the expense of the cemetery or cemetery association, city or town where such or the municipality in which the mausoleum, vault, or crypt is situated.

Sec. 2. REPEAL

18 V.S.A. §§ 5073, relating to construction requirements for mausoleums, columbaria, crypts, and niches, and 5074, relating to inspection of mausoleums and columbaria, are repealed.

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

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

H. 622.

Senator Ashe, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to solicitation by prescreened trigger lead information.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 10206 is added to read:

§ 10206. TRIGGER LEAD SOLICITATIONS FOR MORTGAGE LOANS

(a) In this section:

(1) "Consumer" means a natural person residing in this state.

(2) “Trigger lead” means information about a consumer, including the consumer’s name, address, telephone number, and an identification of the amount, terms, or conditions of credit for which the consumer has applied, that is:

(A) a consumer report obtained pursuant to section 604(c)(1)(B) of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681b, where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for a mortgage loan; and

(B) furnished by the consumer-reporting agency to a third party that is not affiliated with the financial institution or the credit-reporting agency. A trigger lead does not include information about a consumer obtained by a lender that holds or services the existing mortgage indebtedness of the consumer who is the subject of the information.

(3) “Trigger lead solicitation” means a written or verbal offer or attempt to sell any property, rights, or services to a consumer based on a trigger lead.

(b) A person conducting a trigger lead solicitation shall disclose to a consumer in the initial phase of the solicitation that:

(1) the person is not affiliated with the financial institution to which the consumer has submitted an application for credit;

(2) the financial institution to which the consumer has submitted an application for credit has not supplied the person with any personal or financial information; and

(3) the name of the person who paid for the trigger lead solicitation.

(c) A financial institution which has had its name, trade name, or trademark misrepresented in a trigger lead solicitation in violation of this section may, in addition to any other remedy provided by law, bring an action in superior court in the county of its primary place of business, or if its primary place of business is located outside Vermont, in Washington superior court. The court shall award damages for each violation in the amount of actual damages demonstrated by the financial institution or \$5,000.00, whichever is greater. In any successful action for injunctive relief or for damages, the court shall award the financial institution reasonable attorney’s fees and costs, including court costs.

Sec. 2. EFFECTIVE DATE

This act shall take July 1, 2010.

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

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

Message from the House No. 63

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 considered Senate proposal of amendment to House bill entitled:

H. 647. An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Shand of Weathersfield
Rep. Marcotte of Coventry
Rep. Kitzmiller of Montpelier

The House has considered Senate proposal of amendment to House bill entitled:

H. 789. An act making appropriations for the support of government.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Heath of Westford
Rep. Larson of Burlington
Rep. Acinapura of Brandon

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

H.C.R. 333. House concurrent resolution congratulating Kelsey Howard as the Boys & Girls Club 2010 Vermont State Youth of the Year.

H.C.R. 334. House concurrent resolution honoring Mario Bevacqua on his two decades of exemplary educational leadership in the Weathersfield School District.

H.C.R. 335. House concurrent resolution commemorating the bicentennial of the town of Dover.

H.C.R. 336. House concurrent resolution honoring municipal public works departments' employees and designating May 16–22 as Public Works Week in Vermont.

H.C.R. 337. House concurrent resolution congratulating the Woodford Elementary School on its bicentennial anniversary.

H.C.R. 338. House concurrent resolution congratulating the Association of Africans Living in Vermont, Inc. on its 10th anniversary.

H.C.R. 339. House concurrent resolution congratulating the 2010 winning teams of the Jr. Iron Chef Vermont competition.

H.C.R. 340. House concurrent resolution recognizing the town of Goshen and the Blueberry Management Area in the Moosalamoo National Recreation Area as the Wild Blueberry Capital of Vermont.

H.C.R. 341. House concurrent resolution honoring Molly Ferris for her dedicated peace advocacy, her leadership in theatrical circles, and her outstanding community volunteer work.

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

The House has considered concurrent resolution originating in the Senate of the following title:

S.C.R. 49. Senate concurrent resolution honoring former Senator Rita Whalen McCaffrey on her career accomplishments at Dismas of Vermont, Inc.

And has adopted the same in concurrence.

Committee of Conference Appointed

H. 789.

An act making appropriations for the support of government.

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

Senator Bartlett
Senator Sears
Senator Snelling

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

Rules Suspended; Action Messaged

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

H.789.**Consideration Postponed**

Senate bills entitled:

S. 237.

An act relating to operational standards for salvage yards.

S. 287.

An act relating to the licensing and regulation of loan servicers.

House bills entitled:

H. 213.

An act to provide fairness to tenants in cases of contested housing security deposit withholding.

H. 562.

An act relating to the regulation of professions and occupations.

H. 578.

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

Joint Senate resolution entitled:

J.R.S. 50.

Joint resolution urging expedited federal initiation of the National Environmental Policy Act process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

Were taken up.

Thereupon, without objection consideration of the bills and resolution were postponed until the next legislative day.

Adjournment

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