

Journal of the House

Thursday, February 3, 2011

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

Devotional Exercises

Devotional exercises were conducted by Rabbi Toby Weisman of the Jewish Learning Center, Montpelier, VT.

Rules Suspended; House Bills Introduced

House bills of the following titles were severally introduced. Pending first reading of the bills, on motion of **Rep. Turner of Milton**, the rules were suspended and the bills were read the first time by number and referred or placed on the Calendar as follows:

H. 158

By Reps. Cheney of Norwich and Edwards of Brattleboro,

House bill, entitled

An act relating to the establishment of a paint stewardship program;

To the committee on Natural Resources and Energy.

H. 159

By Reps. Helm of Fair Haven, Canfield of Fair Haven, Lanpher of Vergennes, Larocque of Barnet, Shaw of Pittsford, Stevens of Shoreham and Winters of Williamstown,

House bill, entitled

An act relating to fishing access at Lake Champlain Bridge;

To the committee on Fish, Wildlife & Water Resources.

H. 160

By Reps. Pugh of South Burlington and Head of South Burlington,

House bill, entitled

An act relating to advertising as a local business;

To the committee on Commerce and Economic Development.

H. 161

By Reps. Sharpe of Bristol, Keenan of St. Albans City and Mrowicki of Putney,

House bill, entitled

An act relating to regulating the sale of propane gas;

To the committee on Commerce and Economic Development.

H. 162

By Reps. Sharpe of Bristol and Clarkson of Woodstock,

House bill, entitled

An act relating to lottery-linked deposit accounts;

To the committee on Commerce and Economic Development.

H. 163

By Rep. Helm of Fair Haven,

House bill, entitled

An act relating to annual fishing tournament fees;

To the committee on Fish, Wildlife & Water Resources.

H. 164

By Reps. Keenan of St. Albans City, Acinapura of Brandon, Botzow of Pownal, Kitzmiller of Montpelier and Marcotte of Coventry,

House bill, entitled

An act relating to the surplus lines insurance multi-state compliance compact;

To the committee on Commerce and Economic Development.

H. 165

By Rep. Poirier of Barre City,

House bill, entitled

An act relating to health insurance rates and consumer protection;

To the committee on Health Care.

H. 166

By Rep. Stevens of Waterbury,

House bill, entitled

An act relating to limitations on liability for municipal and state landowners;

To the committee on Judiciary.

H. 167

By Rep. Fisher of Lincoln,

House bill, entitled

An act relating to additional payment for solar power that is net metered;

To the committee on Natural Resources and Energy.

H. 168

By Rep. Wilson of Manchester,

House bill, entitled

An act relating to notice of meetings of public bodies;

To the committee on Government Operations.

Joint Resolution Placed on Calendar

J.R.H. 10

Joint resolution requesting the United States Environmental Protection Agency to reimburse the Vermont Agency of Natural Resources for all costs incurred in assisting in the development of a new Lake Champlain Total Maximum Daily Load plan

Offered by: Committee on Fish, Wildlife and Water Resources

Whereas, in 2009, Vermonters joyously celebrated the quadricentennial of Samuel de Champlain's exploration of the lake that now bears his name, and the lake's commercial, economic, and recreational centrality in Vermont's history is well documented, and

Whereas, Vermont, as required by the Clean Water Act, established water quality standards for state surface waters and evaluated whether the state's surface waters meet or exceed state water quality standards, and

Whereas, Lake Champlain does not meet the state water quality standards for phosphorus and, consequently, the state was required under the Clean Water Act to establish a Total Maximum Daily Load (TMDL) plan that was intended to return the lake to compliance with the state's water quality standards, and

Whereas, in 2002, the United States Environmental Protection Agency (EPA) approved Vermont's TMDL to reduce the presence of phosphorous in Lake Champlain, and

Whereas, EPA Region 1 has now reversed EPA's prior approval of the Lake Champlain 2002 TMDL holding that components of the TMDL failed to meet the standards of the federal Clean Water Act, and

Whereas, although EPA is legally required to issue a new TMDL within 30 days of its withdrawing its November 4, 2002 approval of the Vermont portion of the Lake Champlain Phosphorous TMDL, which was issued in a letter to the Vermont Secretary of Natural Resources dated January 24, 2011, EPA has indicated that deadline will not be met, and

Whereas, the unknown timing of EPA's issuance of a new TMDL creates an uncertainty as to the standard for permitting discharges in the interim between the disapproval of the TMDL and the reissuance, and

Whereas, although EPA is legally responsible for developing a new TMDL, it has invited the Vermont Agency of Natural Resources (ANR) to participate in developing this document, and

Whereas, as a result of the EPA's withdrawing its November 4, 2002 approval of the Vermont portion of the Lake Champlain Phosphorous TMDL, extensive technical work will be required, some of which EPA will request or need ANR employees to complete, and

Whereas, the time spent by ANR employees in aiding EPA's reissuance of the TMDL will divert these employees from their regular duties and force ANR to incur considerable expenses for which it has not budgeted, and

Whereas, because this work is occurring on account of a federal directive, EPA should reimburse ANR for any expenses the Vermont agency incurs in assisting in the plan's revision, now therefore be

Resolved by the Senate and House of Representatives:

That the General Assembly requests that the United States Environmental Protection Agency reimburse the Vermont Agency of Natural Resources for all costs it incurs in assisting in the development of a new Lake Champlain Total Maximum Daily Load plan, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Environmental Protection Agency Administrator Lisa Jackson, to Region 1 Administrator Curt Spaulding, and to the Vermont Congressional Delegation.

Which was read and, in the Speaker's discretion, placed on the Calendar

for action tomorrow under Rule 52.

Joint Resolution Adopted in Concurrence

J.R.S. 14

By Senator Campbell,

J.R.S. 14. Joint resolution providing for a Joint Assembly for the election of a Sergeant at Arms, an Adjutant and Inspector General, and three Trustees of the University of Vermont and State Agricultural College.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, February 17, 2011, at ten o'clock and thirty minutes in the forenoon to elect a Sergeant at Arms, an Adjutant and Inspector General, and three trustees of the University of Vermont and State Agricultural College. In case election of all such officers shall not be made on that day, the two Houses shall meet in Joint Assembly at ten o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed in such election, until all such officers are elected

Was taken up read and adopted in concurrence.

Joint Resolution Adopted in Concurrence

J.R.S. 15

By Senators Carris and Mullin,

J.R.S. 15. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 4, 2011, it be to meet again no later than Tuesday, February 8, 2011.

Was taken up read and adopted in concurrence.

House Resolution Adopted

H.R. 6

House resolution, entitled

House resolution urging action on climate change-related policies

Offered by: Representatives Edwards of Brattleboro, Ancel of Calais, Bartholomew of Hartland, Bohi of Hartford, Burke of Brattleboro, Cheney of Norwich, Christie of Hartford, Clarkson of Woodstock, Conquest of Newbury, Copeland-Hanzas of Bradford, Courcelle of Rutland City, Dakin of Chester,

Davis of Washington, Deen of Westminster, Donovan of Burlington, Ellis of Waterbury, Emmons of Springfield, Evans of Essex, French of Shrewsbury, French of Randolph, Gilbert of Fairfax, Grad of Moretown, Haas of Rochester, Head of South Burlington, Heath of Westford, Hooper of Montpelier, Jerman of Essex, Jewett of Ripton, Klein of East Montpelier, Kupersmith of South Burlington, Larson of Burlington, Lenas of Shelburne, Leriche of Hardwick, Macaig of Williston, Marek of Newfane, Martin of Springfield, Martin of Wolcott, Masland of Thetford, McFaun of Barre Town, Mitchell of Barnard, Mook of Bennington, Moran of Wardsboro, Mrowicki of Putney, Munger of South Burlington, Nuovo of Middlebury, O'Brien of Richmond, Partridge of Windham, Pearson of Burlington, Peltz of Woodbury, Ralston of Middlebury, Ram of Burlington, Spengler of Colchester, Stevens of Waterbury, Stuart of Brattleboro, Sweaney of Windsor, Till of Jericho, Toll of Danville, Trieber of Rockingham, Waite-Simpson of Essex, Webb of Shelburne, Wilson of Manchester, Wizowaty of Burlington, Woodward of Johnson, Yantachka of Charlotte and Young of Albany

Whereas, there is consensus among the world's leading scientists that global climate change is occurring and is caused in large measure by the anthropogenic (human-caused) emission of carbon dioxide and other greenhouse gases, and

Whereas, leading climate scientists have set 350 parts per million of carbon in the atmosphere as the imperative goal the world must meet if humanity wishes to preserve a planet similar to that on which civilization has developed, and

Whereas, the projected impact from climate change on Vermont's citizens, infrastructure, mountains, lakes, streams, forests, and communities in the forms of severe weather, rising temperatures, and shifting ecosystems poses a serious risk to our state's economic viability and health, and

Whereas, the state of Vermont has set forth several important goals for avoiding the worst consequences of climate change and transitioning to a clean-energy economy, and

Whereas, these goals include: reducing the state's greenhouse gas emissions 25 percent by 2012, 50 percent by 2028, and 75 percent by 2050; substantially improving the thermal efficiency in 25 percent of the state's older housing stock by 2020; and meeting an increasingly larger portion of our state's electricity needs from in-state renewable supplies, and

Whereas, there is a growing grassroots movement across Vermont calling for deep and aggressive climate and energy action, including more than 100 community energy committees, an active constituency of local groups known as Transition Towns, and a burgeoning 350 Vermont network, and

Whereas, in a 2007 state-sanctioned poll sampling a random selection of Vermonters, there was overwhelming support for developing in-state renewable energy supplies, and broad agreement that while clean energy investments might cost more in the short term, they will cost less in the long term, and

Whereas, a significant amount of work has already been done to identify strategies aimed at reducing Vermont's contribution to climate change, including an exhaustive review and set of 38 policy recommendations from 2007 from a nonpartisan Vermont Commission on Climate Change, and

Whereas, by focusing on energy efficiency, renewable energy development, transportation, land use, forest management, agriculture, waste management, education, and accountability, the recommendations of the Vermont Commission on Climate Change offer the kind of broad-based framework the state must employ to reduce our greenhouse gas emissions, transition away from dwindling and increasingly expensive fossil fuels, and create a clean energy economy, and

Whereas, the threat of climate change requires a renewed effort throughout state government, including in the policy-making legislative branch, to consider the greenhouse gas implications of each administrative or policy decision, now therefore be it

Resolved by the House of Representatives:

That this legislative body finds there is tremendous need and opportunity for a state-coordinated, comprehensive plan that integrates all aspects of climate and energy solutions into a smart, forward-looking, and thoughtful implementation strategy that sets bold targets and outlines specific steps for accomplishing these objectives.

Which was read and adopted.

Third Reading; Bill Passed

H. 6

House bill, entitled

An act relating to powers and immunities of the liquor control investigators

Was taken up, read the third time and passed.

Action on Bill Postponed

H. 138

House bill, entitled

An act relating to executive branch fees

Was taken up and pending second reading of the bill, on motion of **Rep. Ancel of Calais**, action on the bill was postponed until Tuesday, February 8, 2011.

Action on Bill Postponed

H. 46

House bill, entitled

An act relating to youth athletes with concussions participating in athletic activities

Was taken up and pending the reading of the report of the committee on Education, on motion of **Rep. Gilbert of Fairfax**, action on the bill was postponed until Wednesday, February 9, 2011.

Special Report of the Committee on Government Operations Agreed To

Special Committee Report on the request of David Ainsworth

for the House to judge the election and qualifications

of its member in House District Windsor-Orange-1

Representative Sweaney of Windsor, for the Committee on Government Operations, to which has been referred the request of David Ainsworth for the House to judge the election and qualifications of its member in House District Windsor-Orange-1 submits the following report:

The Committee on Government Operations considered the request of David Ainsworth for the House to judge the election and qualifications of its member in House District Windsor-Orange-1 and finds that Representative Sarah E. Buxton was duly elected and is qualified to represent House District Windsor-Orange-1 as a member of the House of Representatives.

Thereupon, **Rep. Sweaney of Windsor** moved to accept the report, which was agreed to.

Remarks Journalized

On motion of **Rep. Turner of Milton**, the following remarks by **Rep. Sweaney of Windsor** were ordered printed in the Journal:

“Mr. Speaker,

Your HGO committee has reached the conclusion as stated in today's calendar that Ms. Sara Buxton from Windsor-Orange 1 was dully elected and is qualified to represent the Windsor-Orange-1 district.

The issue before us came about as a result of the election of the office for representative in the Windsor-Orange-1 district.

The process began with the election night vote count of a win by one vote for Sara Buxton, next to be followed by a recount in Windsor district court that confirmed the one vote win.

That result was then challenged as to the validity of one of the ballots. The concern came before a judge who confirmed the validity of the ballot and the election of Ms. Buxton.

The issue then went to the Attorney General for review.

The petition from Mr. David Ainsworth questioning the validity of the elections and the response of the assistant attorney general can be found in the House Journal of Friday, January 14, 2011. The assistant attorney general's report finds that the election process was valid and confirms the election of Ms. Buxton.

The process then came to the House of Representatives since the constitution states that this body has the duty to deliberate the qualifications of its members when the question of the election is challenged.

The deliberations of the HGO committee included testimony from the assistant attorney general, the state archivist, the Director of Elections, and legislative council for the committee, the town clerks for Tunbridge and Royalton as well as the Windsor County Deputy Clerk who conducted the recount.

The committee during our deliberations found that there is no stated clear process for the House to follow in determining the qualifications of a candidate to serve when the election has been contested. Our options appear to be limited to recommendations of agreement or disagreement regarding the elections. We have discussed possible recommendations to be made to the House to consider for future like matters.

The HGO also concluded that there are possible efficiency recommendations for voting and recounts such as a standardized paper weight for both machine and hand counts thus making possible that the first recount be conducted with machines since they have proven to be more accurate than hand counting. You will hear more about this in the near future since we will be working on legislation to bring forward to the body as a whole.

Our vote was 8-3 and we hope the body will concur with our findings that Sara Buxton is qualified to serve as Representative to the Windsor-Orange-1 district. I therefore make the motion to the House that we concur with the finding of the HGO.”

Message from Governor

A message was received from His Excellency, the Governor, by Mrs. Alexandra Maclean, Secretary of Civil and Military Affairs, as follows:

Mr. Speaker:

I am directed by the Governor to inform the House that on the second day of February, 2011, he approved and signed a bill originating in the House of the following title:

H. 81 An act relating to approval of the adoption and codification of the charters of the town of Danville and the Danville school district

Message from the Senate No. 11

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 16. Joint resolution requesting that penalties under the No Child Left Behind Act be suspended until the Elementary and Secondary Education Act is reauthorized in a revised form.

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

Adjournment

At one o'clock and thirty-five minutes in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.