

# Journal of the House

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Wednesday, March 9, 2011

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

## Devotional Exercises

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

## Message from the Senate No. 21

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

Mr. Speaker:

I am directed to inform the House that:

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

**J.R.H. 11.** Joint resolution urging Congress to approve a streamlined sales tax agreement that will authorize the national collection of sales tax from online sales.

**J.R.H. 12.** Joint resolution urging Congress to retain federal community services block grant funding for the balance of fiscal year 2011 at its current operating level.

And has adopted the same in concurrence.

The Senate has on its part adopted concurrent resolutions originating in the House of the following titles:

**H.C.R. 70.** House concurrent resolution in celebration of the 100th anniversary of Lyndon State College.

**H.C.R. 71.** House concurrent resolution honoring the life of Rutland native John Deere on his 207th birthday.

**H.C.R. 72.** House concurrent resolution congratulating Miles Yucht of Shaftsbury on his scholastic achievement as a 2010 Siemens Award winner.

**H.C.R. 73.** House concurrent resolution recognizing the importance of after-school programs for the youth of Vermont.

**H.C.R. 74.** House concurrent resolution congratulating the Weston Playhouse Theater Company in celebration of its 75th (diamond) anniversary.

**H.C.R. 75.** House concurrent resolution honoring Clyde Prouty for his exemplary public service on behalf of the town of Londonderry.

**H.C.R. 76.** House concurrent resolution honoring the national and community service of Carlisle Coates of Williston.

**H.C.R. 77.** House concurrent resolution honoring Ted's Barber Shop in Manchester .

**H.C.R. 78.** House concurrent resolution congratulating the Lawrence Memorial Library in Bristol on its centennial anniversary.

**H.C.R. 79.** House concurrent resolution congratulating Northeast Slopes of East Corinth on its silver anniversary.

**H.C.R. 80.** House concurrent resolution congratulating Elizabeth Cushman Titus Putnam of Shaftsbury on being the first conservationist awarded the Presidential Citizens Medal.

**H.C.R. 81.** House concurrent resolution congratulating the 2011 Vermont winners of Prudential Spirit of Community Awards.

#### **Message from the Senate No. 22**

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 passed Senate bill of the following title:

**S. 48.** An act relating to prohibiting a sex offender from using a false name when creating a social networking website profile.

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

The Senate has on its part adopted joint resolutions of the following titles:

**J.R.S. 20.** Joint resolution providing for a Joint Assembly to vote on the retention of a Chief Justice and four Justices of the Supreme Court, three Judges of the Superior Court, and seven Judges of the District Court.

**J.R.S. 21.** Joint resolution relating to weekend adjournment.

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

**Committee Bill Introduced****H. 428**

**Rep. Donovan of Burlington**, for the committee on Education, introduced a bill, entitled

An act relating to requiring supervisory unions to perform common duties

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

**Action on Bill Postponed****H. 120**

House bill, entitled

An act relating to commemorative Boy Scout motor vehicle plates

Was taken up and pending third reading of the bill, on motion of **Rep. Bissonnette of Winooski**, action on the bill was postponed until the next legislative day.

**Bill Amended, Read Third Time and Passed****H. 38**

House bill, entitled

An act relating to adopting the interstate compact on educational opportunity for military children

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

In Sec. 1 by redesignating subsection“(c)” as subsection “(d)” and by inserting a new subsection to be subsection (c) to read:

(c) When a student who is the child of a military family moves out of a Vermont school district, the school in which the student was enrolled shall forward official transcripts and other information as permitted by law within two business days of receiving a request for the information from the student’s new school or school district.

Which was agreed to. Thereupon, the bill was read the third time and passed.

**Third Reading; Bill Passed****H. 240**

House bill, entitled

An act relating to continuing to provide for the receivership of long-term care facilities

Was taken up, read the third time and passed.

**Bill Amended; Third Reading Ordered**

**H. 13**

**Rep. Lewis of Derby**, for the committee on Fish, Wildlife & Water Resources, to which had been referred House bill, entitled

An act relating to deer doing damage to forest resources

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

Sec. 1. FINDINGS

The general assembly finds and declares:

(1) The forests of Vermont are integral to the economy, culture, beauty, and appeal of the state.

(2) Each 1,000 acres of forestland in Vermont supports 1.4 forest-based manufacturing, forestry, and logging jobs and 1.4 forest-related tourism and recreation jobs.

(3) Vermont landowners received estimated stumpage revenue in 2005 of \$31.5 million.

(4) The sale of Christmas trees, wreaths, and maple syrup contributed approximately \$22 million in 2005.

(5) White-tailed deer in Vermont are also important socially, culturally, ecologically, and economically.

(6) Under 10 V.S.A. § 4081, an abundant, healthy deer herd is a primary goal of fish and wildlife management in Vermont.

(7) Activities related to white-tailed deer such as hunting, photographing, and viewing generate in excess of \$157 million annually in Vermont, and the revenue generated from deer hunting is dispersed throughout the state's rural communities in the form of food, gasoline, and lodging expenditures.

(8) In parts of Vermont, however, the state's distinct interests in forestland and the deer herd are in conflict where deer populations have damaged existing wood lots and destroyed efforts to reseed or regenerate saplings.

(9) The existing authority to take deer doing damage to crops has been

interpreted by the department of fish and wildlife as applying to trees or plantations cultivated for an annual or perennial crop and not to land managed for the production of other marketable forest products.

(10) The general assembly should clarify the authority of a land owner to take deer doing damage to land managed for the production of marketable forest products in order to mitigate the existing conflicts between management of forestland and the management of the deer herd.

Sec. 2. 10 V.S.A. § 4826 is amended to read:

§ 4826. TAKING DEER DAMAGING CROPS OR FORESTLAND

(a) A person, including an authorized member of the person's family, an authorized regular on-premises employee, or an agent who holds a valid Vermont hunting license and who is designated by the person, may take, with the approval of a game warden, on land owned or ~~occupied~~ leased by the person, up to four deer per calendar year which the person can prove were doing damage to the following:

(1) a tree which is being grown in a plantation or being cultivated for the purpose of harvesting an annual or perennial crop or producing any marketable item; or

(2) a crop-bearing plant; or

(3) a crop, except grass.

(b)(1) The commissioner may issue in writing an approval for a person, including an authorized member of the person's family, an on-premises employee, or an agent who holds a Vermont hunting license and who is designated by the person, to take on land owned or leased by the person up to four deer per calendar year that are doing damage to land managed for the production of marketable forest products, provided that:

(A) The land owned by the person is not posted against hunting;

(B) The person possesses for the land in question a forest management plan that is current and in effect;

(C) The person has notified a game warden of the alleged damage to land managed for the production of marketable forest products;

(D) A county forester has:

(i) inspected the land at issue;

(ii) determined that deer overbrowsing jeopardizes the regeneration of timber species on the land; and

(iii) submitted a summary of inspection to the commissioner of fish and wildlife.

(2) Within 60 days of submission of an inspection summary under subdivision (1) of this subsection, the commissioner shall:

(A) issue a written approval to take up to four antlerless deer on the land at issue, provided that the commissioner shall approve only the taking of an appropriate number of deer in a calendar year on the land at issue as determined by a review of the size of the parcel and all other pertinent factors; or

(B) issue a written decision denying approval to take deer on the land at issue, including a summary of the basis for the denial.

(c) A person by whom, or under whose direction, a deer is wounded or killed, shall report in writing signed by him or her within 12 hours all the facts relative to the act to a game warden. The report shall state the time and place of the wounding or killing.

(e)(d) A person who kills a deer shall immediately properly dress the carcass and care for the meat.

(d)(e) The game warden shall immediately investigate the case and if, Upon request of a warden, the person owning or leasing the land or his or her agent shall direct the warden to the site on which the deer was killed. If satisfied that the deer was taken as provided in this section, the warden shall give the person a certificate of the finding in the matter. The certificate shall entitle the person to the ownership of the carcass, but the person shall not sell or give away the same. However, the head and the antlers, if any, shall be turned over to a warden. In addition, any carcass not needed for home consumption in the household of the certificate-holder shall be turned over to a game warden.

(e)(f) When a game warden finds that a deer has been wounded or killed contrary to the provisions of this section, he or she shall dispose of the deer under the direction of the commissioner, and any monies received therefore shall be paid to the commissioner.

(f)(g)(1) "Person" includes all people who jointly own or occupy lease the land. Therefore, if two or more people jointly own or occupy land, they may jointly take or authorize the taking of only up to four deer.

(2) "Post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title.

~~(g)~~(h) The commissioner may issue a permit to a person to take more than four deer under this section if:

- (1) the land owned by the person is not posted against hunting;
- (2) the person ~~can prove~~ proves that the property is sustaining additional and ongoing damage; and
- (3) the person has taken reasonable measures to prevent the deer from continuing to damage the crop or to damage trees, saplings, or seedlings on land managed for the production of marketable forest products.

~~(h)~~(i) The commissioner is authorized to issue an order requiring any person to remove food or bait which has the effect of luring deer into the vicinity of the property sustaining damage. In this subsection, food does not include a crop or crop-bearing plant.

Sec. 3. 10 V.S.A. § 4081(c) and (d) are amended to read:

(c) An abundant, healthy deer herd, managed in balance with other forest species, forest uses, and forest health, is a primary goal of fish and wildlife management. The use of a limited unit open season on antlerless deer shall be implemented only after a scientific game management study by the fish and wildlife department supports such a season.

(d) Annually, the department shall update a scientific management study of the state deer herd. The study shall consider data provided by department of fish and wildlife biologists; the department of forests, parks and recreation regarding the impact of deer populations on forest health; and citizen testimony taken under subsection (f) of this section.

Sec. 4. DEPARTMENT OF FISH AND WILDLIFE WORKING GROUP ON  
DEER DOING DAMAGE TO LAND MANAGED FOR THE  
PRODUCTION OF MARKETABLE FOREST PRODUCTS

(a) The commissioner of fish and wildlife shall convene a working group to review and recommend methods for addressing or limiting damage by deer to trees, saplings, and seedlings on land managed for the production of marketable forest products. The working group shall consist of the commissioner or his or her designee and the following members to be appointed by the commissioner:

- (1) two qualified foresters;
- (2) two owners of land managed for the production of marketable forest products;

(3) two wildlife biologists with knowledge of the state deer herd or of the impact of deer on forestland; and

(4) two persons who hold a valid Vermont hunting license.

(b) On or before January 15, 2012, the commissioner shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources with the recommendations of the working group. The report shall include an analysis of how and if prohibiting the posting of land as a condition of taking deer doing damage to land managed for the production of marketable forest products will achieve the goal of reducing or mitigating distinct occurrences of damage from deer populations.

#### Sec. 5. EDUCATION AND OUTREACH REGARDING FORESTRY

##### PRACTICES TO PREVENT DEER DOING DAMAGE

On or before September 1, 2011, the commissioner of fish and wildlife, in consultation with the commissioner of forests, parks and recreation, shall conduct education and outreach activities regarding forestry practices to address deer doing damage to land managed for the production of marketable forest products. Such outreach should include methods by which owners of land managed for the production of marketable forest products can contact Vermont licensed hunters in order to invite hunting on land being damaged by deer. The commissioner shall publish recommended forestry practices and other methods for addressing deer damage to land managed for the production of marketable forest products in the department of fish and wildlife's landowner habitat management guidelines, in the Vermont guide to hunting, fishing, and trapping laws, and on the website of the department of fish and wildlife.

Sec. 6. 10 V.S.A. § 4826 is amended to read:

##### § 4826. TAKING DEER DAMAGING CROPS ~~OR FORESTLAND~~

(a) A person, including an authorized member of the person's family, an authorized regular on-premises employee, or an agent who holds a valid Vermont hunting license and who is designated by the person, may take, with the approval of a game warden, on land owned or leased by the person, up to four deer per calendar year which the person can prove were doing damage to the following:

(1) a tree which is being grown in a plantation or being cultivated for the purpose of harvesting an annual or perennial crop or producing any marketable item; or

(2) a crop-bearing plant; or

(3) a crop, except grass.

~~(b)(1) The commissioner may issue in writing an approval for a person, including an authorized member of the person's family, an on premises employee, or an agent who holds a Vermont hunting license and who is designated by the person, to take, on land owned or leased by the person up to four deer per calendar year that are doing damage to land managed for the production of marketable forest products, provided that:~~

~~(A) The land owned by the person is not posted against hunting;~~

~~(B) The person possesses for the land in question a forest management plan that is current and in effect;~~

~~(C) The person has notified a game warden of the alleged damage to land managed for the production of marketable forest products;~~

~~(D) A county forester has:~~

~~(i) inspected the land at issue;~~

~~(ii) determined that deer overbrowsing jeopardizes the regeneration of timber species on the land; and~~

~~(iii) submitted a summary of inspection to the commissioner of fish and wildlife.~~

~~(2) Within 60 days of submission of an inspection summary under subdivision (1) of this subsection, the commissioner shall:~~

~~(A) issue a written approval to take up to four antlerless deer on the land at issue, provided that the commissioner shall approve only the taking of an appropriate number of deer in a calendar year on the land at issue as determined by a review of the size of the parcel and all other pertinent factors; and~~

~~(B) issue a written decision denying approval to take deer on the land at issue, including a summary of the basis for the denial.~~

(c) A person by whom, or under whose direction, a deer is wounded or killed, shall report in writing signed by him or her within 12 hours all the facts relative to the act to a game warden. The report shall state the time and place of the wounding or killing.

(d) A person who kills a deer shall immediately properly dress the carcass and care for the meat.

(e) The game warden shall immediately investigate the case. Upon request of a warden, the person owning or leasing the land or his or her agent shall

direct the warden to the site on which the deer was killed. If satisfied that the deer was taken as provided in this section, the warden shall give the person a certificate of the finding in the matter. The certificate shall entitle the person to the ownership of the carcass, but the person shall not sell or give away the same. However, the antlers, if any, shall be turned over to a warden. In addition, any carcass not needed for home consumption in the household of the certificate-holder shall be turned over to a game warden.

(f) When a game warden finds that a deer has been wounded or killed contrary to the provisions of this section, he or she shall dispose of the deer under the direction of the commissioner, and any monies received therefore shall be paid to the commissioner.

(g)(1) "Person" includes all people who jointly own or lease the land.

(2) "Post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title.

(h) The commissioner may issue a permit to a person to take more than four deer under this section if:

(1) the land owned by the person is not posted against hunting;

(2) the person proves that the property is sustaining additional and ongoing damage; and

(3) the person has taken reasonable measures to prevent the deer from continuing to damage the crop ~~or to damage trees, saplings, or seedlings on land managed for the production of marketable forest products.~~

(i) The commissioner is authorized to issue an order requiring any person to remove food or bait which has the effect of luring deer into the vicinity of the property sustaining damage. In this subsection, food does not include a crop or crop-bearing plant.

Sec. 7. 10 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

Words and phrases used in this part, unless otherwise provided, shall be construed to mean as follows:

\* \* \*

(37) "Post" or "posted land": compliance with the requirements of section 5201 of this title.

Sec. 8. 10 V.S.A. § 4081(g) is amended to read:

(g) If the board finds that an antlerless season is necessary to maintain the health and size of the herd, the department shall administer an antlerless deer program. Annually, the board shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of \$10.00 for residents and \$25.00 for nonresidents a person may apply for a permit. Each person may submit only one application for a permit. The department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title. If the number of landowners who apply exceeds the number of permits for that district, the department shall award all permits in that district to landowners by lottery.

\* \* \*

Sec. 9. 10 V.S.A. § 4253 is amended to read:

§ 4253. LANDOWNER; FAMILY; EXCEPTION

(a) A resident owner of lands, his or her spouse, and their minor children may, without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds therein subject to the provisions of this part.

(b) A nonresident owner of lands, his or her spouse, and their minor children, may without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds thereon subject to the provisions of this part, except if the lands are posted under provisions other than section 4710 of this title.

(c) As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land.

Sec. 10. 10 V.S.A. § 4829 is amended to read:

§ 4829. PERSON SUFFERING DAMAGE BY DEER OR BLACK BEAR

A person who suffers damage by deer to the person's crops, fruit trees, or

crop-bearing plants on land not posted against the hunting of deer, or a person who suffers damage by black bear to the person's cattle, sheep, swine, poultry, or bees or bee hives on land not posted against hunting or trapping of black bear is entitled to reimbursement for the damage, and may apply to the department of fish and wildlife within 72 hours of the occurrence of the damage for reimbursement for the damage. As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land.

Sec. 11. EFFECTIVE DATE

(a) This section and Secs. 1 (findings), 2 (taking deer doing damage), 3 (state deer policy), 4 (working group on deer doing damage), and 5 (outreach and education), 7 (definition of "post"), 8 (antlerless permit; post), 9 (landowner hunt exception; post), and 10 (bear doing damage; post) of this act shall take effect on passage.

(b) Sec. 6 (repeal of authority to take deer doing damage to forestland) of this act shall take effect on January 1, 2013.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Fish, Wildlife & Water Resources agreed to and third reading ordered.

**Bill Amended; Third Reading Ordered**

**H. 143**

**Rep. Wilson of Manchester**, for the committee on Ways and Means, to which had been referred House bill, entitled

An act relating to the taxation of certain Internet sales

Reported in favor of its passage when amended as follows:

In Sec. 2, EFFECTIVE DATE, by striking "2011" and inserting "2012".

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Ways and Means agreed to and third reading ordered.

**Adjournment**

At two o'clock in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at one o'clock in the afternoon.