

Journal of the House

Thursday, April 21, 2011

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

Devotional Exercises

Devotional exercises were conducted by Rev. Mark Pitton of Bethany Church, Montpelier, VT.

Message from the Senate No. 42

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 considered bills originating in the House of the following titles:

H. 443. An act relating to the state's transportation program.

H. 446. An act relating to capital construction and state bonding.

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

Message from the Senate No. 43

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 bills of the following titles:

S. 98. An act relating to authorizing owner-financed property sales.

S. 104. An act relating to modifications to the ban on gifts by manufacturers of prescribed products.

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

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

H. 66. An act relating to the illegal taking of trophy big game animals.

H. 138. An act relating to executive branch fees.

H. 275. An act relating to the recently deployed veteran tax credit.

H. 430. An act relating to providing mentoring support for new principals and technical center directors.

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

House Bill Introduced

H. 457

Reps. Pearson of Burlington introduced a bill, entitled

An act relating to a competition among municipalities to save energy

Which was read the first time and referred to the committee on Natural Resources and Energy.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred to the committee on Rules.

S. 98

Senate bill, entitled

An act relating to authorizing owner-financed property sales;

S. 104

Senate bill, entitled

An act relating to modifications to the ban on gifts by manufacturers of prescribed products.

Bill Referred to Committee on Appropriations

H. 456

House bill, entitled

An act relating to the clean energy development fund and solar energy tax credits

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

House Resolution Placed on Calendar**H.R. 10**

House resolution, entitled

House resolution emphasizing the importance of Jamaican H2-A workers to Vermont's agricultural economy

Offered by: Representatives Jewett of Ripton, Turner of Milton, Partridge of Windham, Lawrence of Lyndon, Botzow of Pownal, Marcotte of Coventry, Johnson of South Hero, Stevens of Shoreham, Acinapura of Brandon, Bartholomew of Hartland, Branagan of Georgia, Browning of Arlington, Buxton of Royalton, Campion of Bennington, Canfield of Fair Haven, Clarkson of Woodstock, Conquest of Newbury, Copeland-Hanzas of Bradford, Deen of Westminster, Devereux of Mount Holly, Fisher of Lincoln, Greshin of Warren, Helm of Fair Haven, Howrigan of Fairfield, Johnson of Canaan, Keenan of St. Albans City, Kilmartin of Newport City, Lenes of Shelburne, Malcolm of Pawlet, Manwaring of Wilmington, Marek of Newfane, McAllister of Highgate, McNeil of Rutland Town, Miller of Shaftsbury, Mitchell of Barnard, Mrowicki of Putney, Pearson of Burlington, Peaslee of Guildhall, Shand of Weathersfield, Smith of New Haven, Taylor of Barre City and Toll of Danville

Whereas, for many years, Vermont's agricultural community has been heavily dependent on seasonal Jamaican contract labor to harvest crops, and

Whereas, Vermont agricultural employers in the H2-A temporary agricultural worker visa program make concerted efforts to advertise for and hire United States citizens and are required to demonstrate a need in order to qualify for H2-A employees, and

Whereas, workers with H2-A permits cannot displace workers from the United States, and employers are required to treat H2-A guest workers and United States citizen workers identically, and

Whereas, among the agricultural operations reliant on seasonal Jamaican labor are poultry and vegetable farms, greenhouses, and apple orchards, and

Whereas, many Vermont farmers rely on sales of poultry and vegetables for a significant portion of their revenue, and

Whereas, greenhouses are fundamental for the initial cultivation of many crops, and

Whereas, according to the Vermont Tree Fruit Growers Association, the state's fresh apple crop is valued at \$12–15 million annually, and value-added

products including cider, applesauce, hard cider, and other apple products double the total cash value of the state's apple crop to \$25–30 million, and

Whereas, Jamaican workers are admitted to work temporarily in the United States as a result of the H2-A visa program that the United States Department of Homeland Security administers in conjunction with the United States Department of Labor (DOL), and

Whereas, these Jamaican workers have long proven their worth to Vermont's farmers and orchard owners, often returning to the same farms year after year, skillfully and conscientiously completing vital farm activities, and

Whereas, without H2-A labor, many Vermont farmers and orchard owners will find it difficult to plant, grow, and harvest their crops on time, and

Whereas, beginning in the autumn of 2010, Vermont's farmers have confronted new regulatory barriers to hiring Jamaican workers, barriers that are slowing the admission of these workers into the United States and denying the Jamaicans their comprehensive Jamaican benefits, and

Whereas, Jamaican agricultural workers are specifically impacted because DOL has declared that the nonprofit Jamaican Central Labour Organisation (JCLO) is a recruitment organization that charges a recruiting fee despite JCLO's assertions to the contrary, and

Whereas, JCLO furthers the mutual interests of both growers and employees, acts as a useful intermediary, promotes employment standards, and provides support services including: advising workers of employment conditions and welfare benefits; meeting workers at the United States ports of entry and assisting them in clearing customs; ensuring that workers and employers adhere to the terms and conditions of employment; periodically visiting housing and work sites to assist in the resolution of work-related or domestic disputes; ensuring that workers receive proper medical attention; and monitoring the employers' payroll documentation, and

Whereas, through 2010, employers sent three payroll deductions, including an administrative fee, a social security fee, and a health insurance fee to JCLO and another 19 percent of each worker's American salary to a bank account for family use in Jamaica, and

Whereas, specifically, the administrative fee was partially allocated to defray program costs which the Jamaican government incurred, and

Whereas, Jamaican H2-A workers in the past arrived in the United States with their JCLO-administered benefits, but starting in 2011, they will no

longer receive these benefits, and, consequently, demands on Vermont's system of public services could increase proportionately, and

Whereas, the Department of Homeland Security's characterization of Jamaican workers' employment deductions as a recruitment fee threatens to cause serious harm to Vermont's agricultural economy, including the loss of domestic employment opportunities, diminished product quality, degradation of Vermont's working landscape, and the potential loss of millions of dollars in Vermont crops, now therefore be it

Resolved by the House of Representatives:

That the viability of Vermont's specialty crop producers' 2011 harvesting operations, many of which rely on Jamaican workers, is seriously at risk because of the uncertainty surrounding the H2-A program, and be it further

Resolved: That the issue of the benefits provided by the Jamaican Central Labour Organisation should not risk the future of the H2-A program and its successful implementation in Vermont and New England, and be it further

Resolved: That this legislative body urge the United States Department of Homeland Security and the United States Department of Labor to coordinate efforts that will ensure the reliable issuance of H2-A visas for Jamaican agricultural workers and the predictable supply of high-quality labor for Vermont producers, and be it further

Resolved: That the United States Department of Homeland Security continue to permit employer deductions for payments to JCLO, and be it further

Resolved: That the Clerk of the House be directed to send copies of this resolution to United States Secretary of Homeland Security Janet Napolitano, to United States Secretary of Labor Hilda Solis, to United States Secretary of Agriculture Tom Vilsack, to the Vermont Congressional Delegation, to Vermont Secretary of Agriculture Chuck Ross, to Vermont Secretary of Commerce and Community Development Lawrence Miller, and to Vermont Commissioner of Labor Anne Noonan.

Which was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

Third Reading; Bills Passed

House bills of the following titles were severally taken up, read the third time and passed:

H. 298

House bill, entitled

An act relating to standardized ballots and vote tabulators;

H. 378

House bill, entitled

An act relating to town payments of county taxes;

Bill Read Second Time; Third Reading Ordered**H. 455**

Rep. Hubert of Milton spoke for the committee on Government Operations.

House bill entitled

An act relating to the enhanced 911 emergency response system

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Bill Amended; Third Reading Ordered**H. 290**

Rep. Mrowicki of Putney, for the committee on Human Services, to which had been referred House bill, entitled

An act relating to adult protective services

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

Sec. 1. ADULT PROTECTIVE SERVICES; RULEMAKING

The secretary of human services shall adopt rules pursuant to chapter 25 of Title 3 governing the implementation of the statutory responsibilities of the department of disabilities, aging, and independent living, division of licensing and protection, with respect to adult protective services. The rules shall include:

- (1) criteria for screening reports and complaints;
- (2) standards for priority determinations and the timeliness of investigations;
- (3) criteria for substantiating complaints;

(4) a process for investigating reports and complaints, including guidance on the roles of the victim and the reporter during the investigation process;

(5) processes for responding to inquiries from victims and reporters and for meeting statutory requirements regarding notification of these individuals;

(6) standards for coordinating and cooperating with law enforcement and state's attorneys;

(7) criteria for when and how the division will arrange for protective services in accordance with a written treatment plan;

(8) criteria for distinguishing possible statutory violations from probable self-neglect;

(9) appropriate referrals for probable self-neglect;

(10) a process for closing an investigation; and

(11) an appeals process that gives the victim and the reporter the right to participate in the appeal of a substantiation.

Sec. 2. APPEAL OF UNSUBSTANTIATION

No later than January 15, 2012, the commissioner of disabilities, aging, and independent living shall make a recommendation to the house committee on human services and the senate committee on health and welfare regarding whether alleged victims of abuse or neglect should have the right to appeal a finding of unsubstantiation.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

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

Proposal of Amendment Agreed to; Third Reading Ordered

S. 49

Rep. Bohi of Hartford, for the committee on Transportation, to which had been referred Senate bill, entitled

An act relating to commercial motor vehicle operation on the interstate system

Reported in favor of its passage in concurrence with proposal of amendment as follows:

In Sec. 2, 23 V.S.A. § 1392, by deleting subdivision (16) and inserting in lieu thereof a new subdivision (16) to read:

(16) Notwithstanding ~~any other provision of law~~ the axle load provisions of section 1391 of this title and the maximum gross load of subdivision (4) of this section, a five or more axle truck tractor, semi-trailer combination, or truck trailer combination, when the load consists solely of unprocessed milk products as defined in subdivision 4(55) of this title, may be registered for and operated with a maximum gross weight of 90,000 pounds on state highways without permit, and upon posted state and town highways and on those highways designated as the national system of interstate and defense highways when the vehicle has been issued a permit in compliance with the provisions of section 1400 of this title; however:

(A) Vehicles ~~registered~~ operated pursuant to this subdivision (16) shall be subject to the same axle spacing restrictions as are applied to five or more axle vehicles registered to 80,000 pounds as set forth in subdivision (4) of this section;

(B) ~~The following shall also apply to vehicles registered pursuant to this subdivision (16):~~

~~(i) no single axle load shall be in excess of 22,400 pounds except that a 10 percent tolerance shall be allowed on each single axle;~~

~~(ii) no tandem axle load shall be in excess of 36,000 pounds except that a 10 percent tolerance shall be allowed on each tandem axle;~~

~~(iii) no single axle of a tandem axle unit shall support more than 60 percent of the total rate supported by the tandem axle unit;~~

~~(iv) no tri axle group, as defined in subdivision (6)(D) of this section, shall support a gross weight in excess of that allowed in subdivision (4) of this section and no tolerance shall be allowed on any tri axle group;~~

~~(v) no single axle of a tri axle group shall support more than 40 percent of the total weight supported by the tri axle group;~~

~~(vi) the maximum load on any axle of the vehicle shall not exceed more than 600 pounds per inch of tire width computed in conformity with the manufacturer's designated width;~~

~~(vii) no tolerance shall be allowed on the gross weight of any vehicle registered under the provisions of this subdivision, nor shall the axle tolerance permitted in subdivisions (i) and (ii) of this subdivision apply when the vehicle is being operated upon posted state or town highways pursuant to the provisions of section 1400 of this title. On those highways designated as~~

the national system of interstate and defense highways, the provisions of subsection 1391(c) of this title shall apply unless other axle load limits, tolerances, or both are authorized under federal law.

(C) The fee for the annual permit as provided in this subdivision shall be \$7.00 when the fee has been paid to register the vehicle for 90,000 pounds or \$285.00 when the vehicle is registered for 80,000 pounds.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

Rules Suspended; Proposal of Amended Agreed to and Third Reading Ordered; Rules Suspended; Resolution Read the Third Time and Adopted in Concurrence With Proposal of Amendment; Rules Suspended and Resolution Messaged to Senate Forthwith

J.R.S. 26

On motion of **Rep. Turner of Milton**, the rules were suspended and Joint resolution, entitled

Joint resolution strongly reaffirming the general assembly's enthusiastic support for the Vermont Association of Snow Travelers' conversion of the Lamoille Valley Railroad rail bed into a four-season recreational trail and alternative transportation path;

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Lanpher of Vergennes, for the committee on Transportation, to which had been referred House bill, entitled

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

Whereas, the St. Johnsbury and Lake Champlain Railroad was completed in 1877 as a 93-mile rail line extending from St. Johnsbury in the east to Swanton in the west, and

Whereas, the rail line continued as a privately owned commercial transportation corridor until the state of Vermont purchased it in 1973, renaming it the Lamoille Valley Railroad (LVR), and

Whereas, in 1995 and 1997, severe flooding caused major damage to the tracks and ties of the railroad, and

Whereas, at the agency of transportation's (AOT's) request, the regional planning commissions, local chambers of commerce, and economic

development officials, operating as the Mountain Valley Corridor Consortium, assumed responsibility for conducting the LVR corridor proposal process, and the proposal of the Vermont Association of Snow Travelers (VAST) to create a four-season recreational corridor and alternative transportation path was selected, and

Whereas, in accordance with Sec. 16 of No. 141 of the Acts of the 2001 Adj. Sess. (2002), the AOT was directed to obtain federal approval for discontinuance of rail service, as required under the Surface Transportation Act, and to gain approval to designate the LVR rail bed for interim trail use, and subject to receiving the federal approval, to enter into leases with VAST to construct the four-season recreational corridor and alternative transportation path and with St. Johnsbury and Swanton for municipally managed recreation trails on small segments of the LVR located in those towns, and

Whereas, in Sec. 78 of No. 93 of the Acts of the 2005 Adj. Sess. (2006), the general assembly authorized the establishment of the Lamoille Valley Rail Trail (LVRT) project and the acceptance of federal funding that was authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub.L. No. 109-59) which provided \$5.3 million of federal funds, and

Whereas, also in 2006, AOT entered into a long-term lease agreement with VAST to build and maintain the LVRT, and

Whereas, the LVRT extends through Act 250 districts 5, 6, and 7, and on September 30, 2009 the majority of the coordinators for those districts determined that an Act 250 permit is required, and

Whereas, the proposed LVRT project provides an unprecedented opportunity to enhance the protection of natural and cultural resources within the project corridor through the repair of existing areas of trail washout and soil erosion, improved stream crossings, the cleanup of existing hazards, eliminating existing encroachments, and the refurbishment of existing drainage infrastructure, combined with implementation of ongoing maintenance activities, and

Whereas, the economic, environmental, and recreational tourism benefits of the LVRT would be of enormous benefit to Vermonters and especially the towns along its path, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly reaffirms its enthusiastic support for the Vermont Association of Snow Travelers' conversion of the Lamoille Valley

Railroad rail bed into a four-season recreational trail and alternative transportation path, *and be it further*

Resolved: That the executive branch of Vermont state government is urged to demonstrate similarly enthusiastic support, including:

1) That the agencies of transportation and of natural resources aid VAST in the efficient and timely acquisition of the necessary permits.

2) That the agencies of commerce and community development, of natural resources, and of transportation assist VAST in the securing of the remaining funding necessary to proceed with the full conversion of the rail bed.

3) That the agency of transportation adhere to all commitments it made in the 2006 lease agreement with VAST, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to VAST Executive Director Bryant Watson, to Secretary of Transportation Brian Searles, to Secretary of Natural Resources Deborah Markowitz, and to Secretary of Commerce and Community Development Lawrence Miller.

Thereupon, the resolution was read the second time, report of the committee on Transportation agreed to and third reading ordered.

On motion of **Rep. Turner of Milton**, the rules were suspended and the resolution placed on all remaining stages of passage in concurrence with proposal of amendment. The resolution was read the third time and adopted in concurrence with proposal of amendment and, on motion of **Rep. Turner of Milton**, the rules were suspended and the resolution was ordered messaged to the Senate forthwith.

Adjournment

At one o'clock and fifty-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.