

Journal of the House

Tuesday, April 10, 2012

Rep. Leriche of Hardwick in Chair.

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Pastor Ed Sorrell of Montgomery United Methodist Church, Montgomery, VT.

Pledge of Allegiance

Page Kirby Occaso of Kirby led the House in the Pledge of Allegiance.

Proposal of Amendment Agreed to; Bill Read Third Time and Passed in Concurrence with Proposal of Amendment S. 179

Senate bill, entitled

An act relating to amending perpetual conservation easements

Was taken up and pending third reading of the bill, **Rep. Krebs of South Hero** moved that the House Proposal of Amendment in Sec. 9 of the be amended by inserting a subdivision (b)(16) to read:

(16) A land surveyor licensed in Vermont, appointed by the Vermont Society of Land Surveyors.

Which was agreed to.

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

Bill Read Second Time; Third Reading Ordered

H. 791

Rep. Clarkson of Woodstock spoke for the committee on Ways and Means.

House bill entitled

An act relating to tax expenditures for nonprofits, charitable organizations, and miscellaneous tax expenditures, as presented in the tax expenditure budget for 2012

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

Proposal of Amendment Agreed to; Third Reading Ordered

S. 116

Rep. Koch of Barre Town, for the committee on Judiciary, to which had been referred Senate bill, entitled

An act relating to probate proceedings

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

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Rule 4(e) of the Vermont Rules of Probate Procedure is amended to read:

(e) Service by publication. When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published ~~once a week for two successive weeks and at least seven days apart~~ in a designated newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The ~~first~~ publication of the notice shall be made within 20 days after the petition is filed or the order is granted. Service by publication is complete on the day of ~~the last~~ publication.

Sec. 2. Rule 17 of the Vermont Rules of Probate Procedure is amended to read:

Rule 17. PARTIES GENERALLY

(a) Parties at commencement. At the commencement of a probate proceeding all interested persons shall be considered parties and shall be served with notice pursuant to Rule 4.

(1)(A) Decedent's estates. At commencement of a probate proceeding involving a decedent's estate, the term "interested person" includes heirs, devisees, legatees, children, spouses, and such other persons as the court directs. The term "interested person" also includes the trustees of any trusts to which assets of the decedent's estate may be distributed. Notice to a trustee shall be sufficient to notify the trust's beneficiaries. It also includes persons having priority for appointment as executor or administrator, and other fiduciaries representing interested persons.

(B) The court, on motion, may order that an interested party need not be served with notice pursuant to Rule 4:

(i) if after due diligence the interested party cannot be located; or

(ii) for other good cause shown if the court finds that not providing such notice serves the interests of justice and the efficient administration of the estate.

* * *

Sec. 3. 14 V.S.A. § 3504 is amended to read:

§ 3504. SCOPE OF AUTHORITY

(a)(1) The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney, subject to section 3506 of this title and subsections (b) through (g) of this section.

(2) A general power of attorney created under this subchapter shall be construed to grant powers that are not expressly delineated in the terms of the power of attorney if it appears from the relevant facts and circumstances that the principal intended the agent to have general authority to act on the principal's behalf with respect to all lawful subjects and purposes. The specific inclusion or exclusion of one or more powers shall not, by itself, prevent a determination that the principal intended to grant general authority to the agent.

* * *

Sec. 4. 14 V.S.A. § 3516 is amended to read:

§ 3516. EFFECTIVE DATE; EFFECT ON EXISTING POWERS OF ATTORNEY

(a) A power of attorney shall be valid if it:

(1) complies with the terms of this subchapter; or

(2) is executed before July 1, 2002 and valid under common law or statute existing at the time of execution.

(b) If a power of attorney executed before July 1, 2002 was valid under common law or statute existing at the time of execution, any exercise of authority under the power of attorney, whether before or after July 1, 2002, shall be deemed valid if the exercise complies with common law or statute existing at the time of execution.

Sec. 5. 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 and the recommendation of proposal of amendment agreed to and third reading ordered.

Proposal of Amendment Agreed to; Third Reading Ordered**S. 238**

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

An act relating to expanding access to driving privileges in Vermont

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

First: In Sec. 1, in subsection (b), by striking the word “seven”

Second: In Sec. 1, in subsection (b), by adding two new subdivisions to be subdivisions (8) and (9) to read:

(8) One member appointed by the Addison County Economic Development Corporation.

(9) One member appointed by the Vermont Farm Bureau.

Third: In Sec. 1, in subdivision (c)(1), by striking the words “to recommend legislation that will” and inserting in lieu thereof the words “and may recommend legislation that would”

and that after passage the title of the bill be amended to read: “An act relating to a study on access to driving privileges in Vermont”

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.

Message from the Senate No. 41

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. 56. Joint resolution relating to weekend adjournment.

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

Speaker Smith back in Chair.

Senate Proposal of Amendment Concurred in

H. 449

The Senate proposed to the House to amend House bill, entitled

An act relating to the designation of brook trout and walleye pike as the state fish of Vermont

In Sec. 1, by striking out subdivision (4) in its entirety and inserting in lieu thereof the following:

(4) the original designation of these two fish was championed by the students of Cornwall Elementary School, whose efforts resulted in a Joint Resolution, approved by the General Assembly on May 3, 1978 (J.R.S. 41), designating the two state fish.

Which proposal of amendment was considered and concurred in.

Read Third Time and Passed

H. 789

House bill, entitled

An act relating to reapportioning the final representative districts of the House of Representatives

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

First: In Sec. 1, before ~~BENNINGTON-3~~, by inserting the following:

BENNINGTON-2-1 That portion of the town of Bennington
not included in BENNINGTON-2-2 or
BENNINGTON-2-3

2 1

* * *

Second: In Sec. 1, by striking districts BENNINGTON-3-1 and BENNINGTON-3-2 in their entirety and inserting in lieu thereof the following:

BENNINGTON-2-3 Glastenbury, Shaftsbury, and that portion of the town of Bennington encompassed within a boundary beginning at the point where the boundary line of Bennington and

the town of Pownal intersects with Mount Anthony Road; then northerly along the western side of the centerline of Mount Anthony Road to the intersection of VT Route 9; then easterly along the northern side of the centerline of VT 9 to the intersection of Monument Avenue; then northerly along the western side of the centerline of Monument Avenue to the intersection of Bank Street; then northeasterly along the northern side of the centerline of Bank Street to the intersection of Hunt Street; then easterly along the northern side of the centerline of Hunt Street to the intersection of Northside Drive; then northerly along the western side of the centerline of Northside Drive to the intersection of VT Route 7A; then easterly along the northern side of the centerline of VT 7A to the intersection of VT Route 7; then northerly along the western side of the centerline of VT 7 to the intersection of the boundary of Shaftsbury; then westerly along the Shaftsbury town line to the intersection of the boundary of the state of New York; then southerly along the New York state line to the intersection of the boundary of Pownal; then easterly along the Pownal town line to the point of beginning 2

BENNINGTON-3

Arlington, Sandgate, Sunderland, and that portion of the town of Rupert encompassed within a boundary beginning at the point where the boundary line of Rupert and the state of New York intersects with VT Route 153; then northeasterly along the southern side of the centerline of VT 153 to the intersection of East Street; then easterly along the southern side of the centerline of East Street to the intersection of Kent Hollow Road; then easterly along the southern side and southerly along the western side of the centerline of Kent Hollow Road to the boundary of Sandgate; then westerly along the Sandgate town line to the boundary of New York; then northerly along the New York state line to the point of beginning 1

Third: In Sec. 1, by striking districts RUTLAND-BENNINGTON and RUTLAND-1 in their entirety and inserting in lieu thereof the following:

RUTLAND-

BENNINGTON	Middletown Springs, Pawlet, Tinmouth, that portion of the town of Wells not in RUTLAND-1, and that portion of the town of Rupert not in BENNINGTON-3 1
RUTLAND-1	Ira, Poultney, and that portion of the town of Wells encompassed within a boundary beginning at the point where the boundary line of Wells and Poultney intersects with West Lake Road; then southerly along the eastern and Lake St. Catherine side of the centerline of West Lake Road to the intersection of VT Route 30; then northerly along the western and Lake St. Catherine side of the centerline of VT 30 to the boundary of Poultney; then westerly along the Poultney town line to the point of beginning 1

Thereupon, **Rep. Browning of Arlington** asked and was granted leave of the House to withdraw her amendment.

Thereupon, the bill was read a third time.

Pending the question, Shall the bill pass? **Rep. Savage of Swanton** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill pass? was decided in the affirmative. Yeas, 126. Nays, 13.

Those who voted in the affirmative are:

Acinapura of Brandon	Condon of Colchester	Evans of Essex
Ancel of Calais	Conquest of Newbury	Fagan of Rutland City
Andrews of Rutland City	Consejo of Sheldon	Fisher of Lincoln
Atkins of Winooski	Copeland-Hanzas of	Frank of Underhill
Bartholomew of Hartland	Bradford	French of Shrewsbury
Batchelor of Derby	Corcoran of Bennington	French of Randolph
Bissonnette of Winooski	Courcelle of Rutland City	Gilbert of Fairfax
Bohi of Hartford	Crawford of Burke	Grad of Moretown
Botzow of Pownal	Davis of Washington	Greshin of Warren
Bouchard of Colchester	Deen of Westminster	Haas of Rochester
Branagan of Georgia	Degree of St. Albans City	Head of South Burlington
Brennan of Colchester	Devereux of Mount Holly	Heath of Westford
Burditt of West Rutland	Dickinson of St. Albans	Hebert of Vernon
Burke of Brattleboro	Town	Helm of Fair Haven
Campion of Bennington	Donaghy of Poultney	Higley of Lowell
Canfield of Fair Haven	Donahue of Northfield	Hooper of Montpelier
Cheney of Norwich	Eckhardt of Chittenden	Hubert of Milton
Christie of Hartford	Edwards of Brattleboro	Jerman of Essex
Clark of Vergennes	Ellis of Waterbury	Jewett of Ripton
Clarkson of Woodstock	Emmons of Springfield	Johnson of South Hero

Johnson of Canaan	Masland of Thetford	Russell of Rutland City
Keenan of St. Albans City	McAllister of Highgate	Savage of Swanton
Kilmartin of Newport City	McCullough of Williston	Scheuermann of Stowe
Kitzmiller of Montpelier	McFaun of Barre Town	Shand of Weathersfield
Klein of East Montpelier	McNeil of Rutland Town	Shaw of Pittsford
Koch of Barre Town	Miller of Shaftsbury	Smith of New Haven
Komline of Dorset	Mook of Bennington	South of St. Johnsbury
Krebs of South Hero	Moran of Wardsboro	Stevens of Waterbury
Kupersmith of South Burlington	Munger of South Burlington	Stevens of Shoreham
Lanpher of Vergennes	Myers of Essex	Strong of Albany
Larocque of Barnet	Nuovo of Middlebury	Stuart of Brattleboro
Lawrence of Lyndon	O'Brien of Richmond	Sweaney of Windsor
Lenes of Shelburne	Olsen of Jamaica	Till of Jericho
Leriche of Hardwick	Partridge of Windham	Toll of Danville
Lewis of Derby	Pearce of Richford	Townsend of Randolph
Lippert of Hinesburg	Pearson of Burlington *	Turner of Milton
Macaig of Williston	Peltz of Woodbury	Waite-Simpson of Essex
Manwaring of Wilmington	Perley of Enosburgh	Webb of Shelburne
Marcotte of Coventry	Poirier of Barre City	Wilson of Manchester
Marek of Newfane	Potter of Clarendon	Winters of Williamstown
Martin of Springfield	Pugh of South Burlington	Woodward of Johnson
Martin of Wolcott	Ralston of Middlebury	Wright of Burlington
	Reis of St. Johnsbury	Young of Glover

Those who voted in the negative are:

Aswad of Burlington	Lorber of Burlington	Trieber of Rockingham
Buxton of Tunbridge	Malcolm of Pawlet	Wizowaty of Burlington
Donovan of Burlington	Mrowicki of Putney	Zagar of Barnard
Krowinski of Burlington	Ram of Burlington	
Lewis of Berlin *	Sharpe of Bristol	

Those members absent with leave of the House and not voting are:

Browning of Arlington	Morrissey of Bennington	Taylor of Barre City
Dakin of Chester	O'Sullivan of Burlington	Yantachka of Charlotte
Howard of Cambridge	Peaslee of Guildhall	
Howrigan of Fairfield	Spengler of Colchester	

Rep. Lewis of Berlin explained her vote as follows:

“Mr. Speaker:

I vote ‘no’ on this bill out of respect for my Berlin BCA, who preferred a single-seat district. However, I’m looking forward to representing my friends and neighbors in Northfield.”

Rep. Pearson of Burlington explained his vote as follows:

“Mr. Speaker:

I’m proud to support this map because I believe it is respectful of the process. It shows trust in our local officials and, in the end, shows what an effective non-partisan process can deliver. I look forward to that integrity continuing as this bill makes its way into law.”

Rep. Turner of Milton explained his vote as follows:

“Mr. Speaker:

Local control, the integrity of the Gov Ops Committee and the legislative reapportionment process in its entirety were preserved by the minority today. Thank you.”

Recess

At twelve o'clock and five minutes in the afternoon, the Speaker declared a recess until two o'clock and thirty minutes in the afternoon.

At two o'clock and thirty minutes in the afternoon, the Speaker called the House to order.

Rep. Leriche of Hardwick in Chair.

Bill Amended; Third Reading Ordered

H. 679

Rep. Cheney of Norwich, for the committee on Natural Resources and Energy, to which had been referred House bill, entitled

An act relating to creating a uniform generation tax for renewable energy plants

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

Sec. 1. 32 V.S.A. chapter 215 is added to read:

CHAPTER 215. RENEWABLE ENERGY

§ 8701. UNIFORM CAPACITY TAX

(a) For the purpose of this section, the terms “kW,” “plant,” “plant capacity,” and “renewable energy” shall be as defined in 30 V.S.A. § 8002.

(b) There is assessed on any renewable energy plant in Vermont generating electricity by use of solar power an annual tax of \$4.00 per kW plant capacity. The tax shall be paid to the department of taxes no later than April 15 of each year, for energy generated in the preceding year, and accompanied by a return

with such information as the department of taxes may require. The department of taxes shall deposit the taxes collected under this section into the education fund. The department of taxes may adopt procedures and rules necessary to implement the tax in this section.

(c) A renewable energy plant that generates electricity from solar power shall be exempt from taxation under this section if it has a plant capacity equal to or less than 10 kW.

Sec. 2. 32 V.S.A. § 3802(17) is added to read:

(17) Real and personal property composing a renewable energy plant generating electricity from solar power, if the plant is exempt from taxation under chapter 215 of this title.

Sec. 3. 32 V.S.A. § 5401(10)(J) is amended to read:

(J) Buildings and fixtures of:

(i) wind-powered electric generating facilities taxed under section 5402c of this title; and

(ii) renewable energy plants generating electricity from solar power that are taxed under section 8701 of this title.

Sec. 4. PROSPECTIVE REPEAL; REPORT

32 V.S.A. §§ 8701(c) and 3802(17) (exemptions for small renewable energy plants) shall be repealed on January 1, 2023. By January 15, 2021, the department of taxes shall report to the senate committees on finance and on natural resources and energy, and the house committees on ways and means and on natural resources and energy with a recommendation on whether the exemptions in 32 V.S.A. §§ 8701(c) and 3802(17) should be retained or allowed to be repealed.

Sec. 5. 32 V.S.A. § 5402c(a) is amended to read:

(a) A facility certified by the commissioner of public service as a facility which produces electrical energy for resale, generated solely from wind power, which has an installed capacity of at least ~~five megawatts~~ one megawatt, which was placed in service after January 1, 2007, and which holds a valid certificate of public good issued under 30 V.S.A. § 248, shall be assessed an alternative education property tax on its buildings and fixtures used directly and exclusively in the generation of electrical energy from wind power.

Sec. 6. 32 V.S.A. § 3101 is amended to read:

§ 3101. POWERS AND DUTIES OF COMMISSIONER

- (a) The department of taxes shall be administered by a commissioner of taxes.
- (b) The commissioner shall:

* * *

(11) from time to time prepare and publish statistics reasonably available with respect to the operation of this title including amounts collected, classification of taxpayers, tax liabilities and such other facts as the commissioner or the general assembly considers pertinent;

(12) ~~{Repealed.}~~

(13) from time to time provide municipalities with recommended methods for determining, for municipal tax purposes, the fair market value of renewable energy plants that are subject to taxation under section 8701 of this title.

Sec. 7. EFFECTIVE DATE

This act shall take effect on January 1, 2013.

Rep. Greshin of Warren, for the committee on Ways and Means, recommended that the bill ought to pass when amended as recommended by the committee on Natural Resources and Energy, and when further amended as follows:

First: In Sec. 1, in 32 V.S.A. § 8701, in subsection (b), after “Vermont” by striking the words “generating electricity by use of” and inserting in lieu thereof “commissioned to generate”, and after “no later than April 15 of each year” by striking “, for energy generated in the preceding year,”

Second: In Sec. 4 (prospective repeal; report), after “allowed to be repealed” by inserting the words “and, whether the rate of tax in 32 V.S.A. § 8701(b) should be altered”

and that after passage the title of the bill be amended to read: “An act relating to creating a uniform capacity tax for solar renewable energy plants”

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

Bill Read Second Time; Third Reading Ordered**H. 784**

Rep. Mook of Bennington spoke for the committee on Government Operations.

House bill entitled

An act relating to approval of the adoption and codification of the charter of the town of Williamstown

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

Bill Read Second Time; Third Reading Ordered**H. 786**

Rep. Devereux of Mount Holly spoke for the committee on Government Operations.

House bill entitled

An act relating to approval of amendments to the charter of the town of Windsor

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

Bill Read Second Time; Third Reading Ordered**H. 788**

Rep. Townsend of Randolph spoke for the committee on Government Operations.

House bill entitled

An act relating to approval of amendments to the charter of the town of Richmond

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

Action on Bill Postponed**H. 503**

House bill, entitled

An act relating to eliminating the ability of the sergeant at arms to employ a traffic control officer and requiring the certification of capitol police officers

Was taken up and pending the question, Shall the House concur in the Senate proposal of amendment? on motion of **Rep. Grad of Moretown**, action on the bill was postponed until the next legislative day.

Adjournment

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