

Journal of the Senate

FRIDAY, FEBRUARY 11, 2011

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Nancy McHugh of Waitsfield.

Message from the House No. 17

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 joint resolution originating in the Senate of the following title:

J.R.S. 18. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 18

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 passed a House bill of the following title:

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

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

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

J.R.S. 17. Joint resolution establishing a procedure for the conduct of the election of UVM trustees by plurality vote by the General Assembly in 2011.

And has adopted the same in concurrence.

The House has considered Senate proposal of amendment to House bill of the following title:

H. 65. An act relating to fiscal year 2011 budget adjustment.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

Proposed Amendment to the Constitution Introduced

The Proposed Amendment to the Constitution of the State of Vermont designated as Proposal 3 was introduced, read the first time and referred:

By Senators Brock, Benning, Campbell, Cummings, Doyle, Flory, Giard, Mazza, Miller, Mullin, Sears and Starr

PROPOSAL 3

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to provide that the term of office for Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, High Bailiffs, and Justices of the Peace be four years, and that the Governor, Lieutenant Governor, and Treasurer be elected by plurality vote, beginning with the term commencing after the general election in November 2016.

Sec. 2. Section 43 of Chapter II of the Vermont Constitution is amended to read:

§ 43. [~~BIENNIAL~~ ELECTIONS]

The Governor, Lieutenant-Governor, Treasurer, Secretary of State, Auditor of Accounts, ~~Senators, Town Representatives~~, Assistant Judges of the County Court, Sheriffs, High Bailiffs, State's Attorneys, Judges of Probate, and Justices of the Peace, shall be elected ~~biennially~~ every four years on the first Tuesday next after the first Monday of November, beginning in A.D. ~~1914~~ 2016. State Senators and State Representatives shall be elected biennially on the first Tuesday next after the first Monday of November, beginning in A.D. 2016.

Sec. 3. Section 47 of Chapter II of the Vermont Constitution is amended to read:

§ 47. [ELECTION OF GOVERNOR, LIEUTENANT-GOVERNOR, AND TREASURER]

The voters of each town shall, on the day of election ~~for choosing Representatives to attend the General Assembly, bring in, cast~~ their votes for Governor, ~~with the name fairly written, to the Constable, who shall seal them~~

~~up, and write on them, Votes for Governor, and deliver them to the Representatives chosen to attend the General Assembly; and at.~~ At the opening of the General Assembly, there shall be a committee appointed out of the Senate and House of Representatives, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort, and count the votes for Governor, and declare the person who has the major part of the greatest number of votes, to be Governor for the two years ensuing term. The Lieutenant-Governor and the Treasurer shall be chosen in the manner above directed.

The votes for Governor, Lieutenant-Governor, and Treasurer, of the State, shall be sorted and counted, and the result declared, by a committee appointed by the Senate and House of Representatives.

~~If, at any time, there shall be no election, of Governor, Lieutenant Governor, or Treasurer, of the State, the Senate and House of Representatives shall by a joint ballot, elect to fill the office, not filled as aforesaid, one of the three candidates for such office (if there be so many) for whom the greatest number of votes shall have been returned.~~

Sec. 4. Section 49 of Chapter II of the Vermont Constitution is amended to read:

§ 49. [TERM OF GOVERNOR, LIEUTENANT-GOVERNOR AND, TREASURER, SECRETARY OF STATE, AND AUDITOR OF ACCOUNTS]

The term of office of the Governor, Lieutenant-Governor ~~and~~, Treasurer, Secretary of State, and Auditor of Accounts of the State, respectively, shall commence when they shall be chosen and qualified, and shall continue for the term of ~~two~~ four years, or until their successors shall be chosen and qualified; ~~or to the adjournment of the session of the Legislature at which, by the Constitution and laws, their successors are required to be chosen, and not after such adjournment.~~

Sec. 5. EFFECTIVE DATE

Once ratified and adopted by the people of this state in accordance with the provisions of chapter 32 of Title 17, the provisions of this amendment shall become a part of the Vermont Constitution as of the first Tuesday next after the first Monday of November 2014.

To the Committee on Government Operations.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 58.

By Senators Sears, Campbell and Illuzzi,

An act relating to jurisdiction of a crime committed when the defendant was under the age of 16.

To the Committee on Judiciary.

S. 59.

By Senators McCormack, Ayer, Baruth, Fox, Miller and White,

An act relating to negligent storage of a firearm.

To the Committee on Judiciary.

S. 60.

By Senator Ashe,

An act relating to applying the federal alternative minimum tax at the state level.

To the Committee on Finance.

S. 61.

By Senator Illuzzi,

An act relating to the imposition of a delinquency penalty for the paying of property taxes.

To the Committee on Finance.

S. 62.

By Senator Illuzzi,

An act relating to renaming the John H. Boylan Airport.

To the Committee on Institutions.

S. 63.

By Senators Ashe, Carris, Doyle and Illuzzi,

An act relating to state purchasing from local and socially responsible businesses.

To the Committee on Government Operations.

S. 64.

By Senators Brock, Benning, Campbell, Cummings, Doyle, Flory, Giard, Mazza, Miller, Mullin, Sears and Starr,

An act relating to amending the attorney general's term of office from two years to four years.

To the Committee on Government Operations.

S. 65.

By Senators Brock, Benning, Flory, Hartwell, Kittell, Lyons, McCormack and Doyle,

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles.

To the Committee on Judiciary.

S. 66.

By Senator Illuzzi,

An act relating to assault of a health care worker.

To the Committee on Judiciary.

Joint Resolution Referred**J.R.H. 10.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

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.

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.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Natural Resources and Energy.

Bill Referred

House bills of the following titles were severally read the first time and referred:

H. 6.

An act relating to powers and immunities of the liquor control investigators.
To the Committee on Judiciary.

H. 138.

An act relating to executive branch fees.
To the Committee on Finance.

Third Reading Ordered

S. 49.

Senate committee bill entitled:

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

Having appeared on the Calendar for notice for one day, was taken up.

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

Rules Suspended; House Proposal of Amendment to Senate Proposal of Amendment Concurred In; Bill Messaged

H. 65.

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to Senate proposal of amendment to House bill entitled:

An act relating to fiscal year 2011 budget adjustment.

Was taken up for immediate consideration.

The House concurs in the Senate proposal of amendment with the following amendments thereto:

First: By striking out Sec. 80 in its entirety and inserting in lieu thereof a new Sec. 80 to read as follows:

Sec 80. CLEAN ENERGY DEVELOPMENT FUND; RETURN OF MONEYS

(a) The sum of \$2,000,000 described in Sec. 24(b) of No. 161 of the Acts of the 2009 Adj. Sess. (2010), as that section read effective June 4, 2010, is returned to the clean energy development fund established in 10 V.S.A. § 6523(a). Of this sum, \$500,000 shall be transferred to the entrepreneurs' seed capital fund created under 10 V.S.A. § 291, \$500,000 shall be retained in the fund to be expended as determined by the clean energy development board, and the remaining \$1,000,000 shall be used for the purpose of supporting tax credits certified by the clean energy development board pursuant to 32 V.S.A. § 5930z. Notwithstanding 32 V.S.A. § 5930z(c)(2)(A), a net metering system of greater than 150 kW shall be eligible for the solar tax credit if it filed the requisite form with the clean energy development board after July 15, 2010, and on or before December 15, 2010.

Second: By striking out Sec. 80c in its entirety and inserting in lieu thereof a new Sec. 80c to read as follows:

Sec. 80c. Sec. 3(b) of No. 78 of the Acts of the 2009 Adj. Sess. (2010), is amended to read:

(b) This appropriation will supplement the ~~\$1,000,000.00 of ARRA funds in the clean energy development fund transferred to the seed capital fund pursuant to Sec. 10f of this act as well as the \$2,150,000.00 appropriated to the fund under No. 54 of the Acts of 2009, and the \$1,000,000.00 in federal funds received by the fund manager, Vermont Center for Emerging Technologies, Inc. (VCET), from the economic development initiative of the United States Department of Housing and Urban Development and pledged as a match to the seed fund, as well as the \$500,000.00 in clean energy development funds reallocated to the seed fund pursuant to Sec. 80 of H. 65 of the 2011 legislative session.~~ In addition, H.789 of the 2010 legislative session (the big bill) contains an appropriation to VCET; however, these big-bill funds are intended to cover the operational costs of VCET in lieu of funding which will no longer be provided by the University of Vermont.

Third: By striking out Sec. 98 in its entirety and inserting in lieu thereof a new Sec. 98 to read as follows:

Sec. 98. REPORT; WOODSIDE JUVENILE REHABILITATION CENTER

(a) The agency of human services shall convene a working group that includes the commissioner of the department of corrections, the commissioner of the department for children and families, the supervising attorney in the office of the juvenile defender, the executive director of the state's attorneys and sheriffs department, and the administrative judge to monitor and review the effect, if any, the changes to the Woodside Juvenile Rehabilitation Center implemented in this act have on the placement of adolescents who have been adjudicated or charged with a delinquency or criminal act. As part of its process, the working group shall consult with the Vermont coalition of residential programs.

(b) On or before January 15, 2012, the agency of human services shall report the findings and any recommendations of the working group to the senate committees on appropriations, on health and welfare, and on judiciary, and the house committees on appropriations, on human services, and on judiciary.

Thereupon, the question, Shall the Senate concur in the House proposals of amendment to the Senate proposal of amendment?, was decided in the affirmative.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

Message from the House No. 19

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 passed House bills of the following titles:

H. 46. An act relating to youth athletes with concussions participating in athletic activities.

H. 85. An act relating to recognition of the Nulhegan Band of the Coosuk Abenaki Nation as a Native American Indian tribe.

H. 86. An act relating to recognition of the Elnu Abenaki tribe as a Native American Indian tribe.

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

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

H.C.R. 46. House concurrent resolution honoring Shaftsbury town clerk Judith Stratton and resident Florence Beebe for their comprehensive cataloging and historical annotating of veterans' grave sites in Shaftsbury.

H.C.R. 47. House concurrent resolution honoring the town of Essex Police Chief Leo Nadeau on the conclusion of his superb four-decade-long law enforcement career.

H.C.R. 48. House concurrent resolution honoring Charles Gingo for his exemplary leadership of state social services in Bennington County.

H.C.R. 49. House concurrent resolution congratulating Pamela Arnold on being named the 2010 Vermont Principals' Association's Middle School Principal of the Year.

H.C.R. 50. House concurrent resolution congratulating Caroline Bright on being named Miss Vermont for 2010.

H.C.R. 51. House concurrent resolution recognizing the important role of nonprofit organizations in Vermont.

H.C.R. 52. House concurrent resolution in memory of Mary Pat O'Hagan of Sheffield.

H.C.R. 53. House concurrent resolution congratulating the Green Mountain Council Boy Scout Eagle Class of 2010.

H.C.R. 54. House concurrent resolution recognizing the dedicated civic service of former Representative Lawrence Molloy of Arlington.

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

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, February 15, 2011, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 18.