

Journal of the Senate

THURSDAY, FEBRUARY 2, 2012

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Melvin Bridge of Ryegate.

Message from the House No. 15

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. 43. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Bills Referred

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

H. 59.

An act relating to unfair housing practices.

To the Committee on Economic Development, Housing and General Affairs.

H. 449.

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

To the Committee on Natural Resources and Energy.

H. 552.

An act relating to payment of workers' compensation benefits by electronic payroll card.

To the Committee on Economic Development, Housing and General Affairs.

Joint Resolution Placed on Calendar**J.R.H. 22.**

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

Joint resolution urging each university and college in Vermont to establish offices to assist students who are United States military veterans.

Whereas, in recent years, a large number of young men and women have served our nation in Iraq and Afghanistan as members of the United States Air Force, Army, Marines, and Navy, as well as National Guard units, and

Whereas, as these military veterans return from the battlefields to civilian life, an important avenue for career development is college studies on either a full- or part-time basis, and

Whereas, although the United States Department of Veterans Affairs and the Vermont Office of Veterans Affairs each provide myriad informational and support services, college students who have served our nation often need immediate access to qualified professionals who can individually assist them with matters related to career and educational options, personal finances, and health care that are unique to veterans, and include navigating through the labyrinth of the United States Department of Veterans Affairs' bureaucracy and the intricacies of the GI Bill, and

Whereas, college students' academic schedules often limit their ability to travel to off-campus locations to visit federal and state offices serving veterans, and

Whereas, these veterans' inquiries and support requirements may have a direct correlation with their lives as students, and an information counselor who is well versed in educational matters would bring a more knowledgeable perspective to questions that may be posed, and

Whereas, encouraging veterans to attend college is both individually and societally beneficial, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges each university and college in Vermont to establish an on-campus veterans affairs office to provide specialized assistance and support to college students who are military veterans, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Governor's Veterans Advisory Council and to each university and college president in Vermont.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Committee Relieved of Further Consideration; Bills Committed

H. 21.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to the Uniform Limited Cooperative Association Act,
and the bill was committed to the Committee on Finance.

H. 42.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to employment decisions based on credit information,
and the bill was committed to the Committee on Economic Development,
Housing and General Affairs.

H. 53.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to the Interstate Wildlife Violator Compact,
and the bill was committed to the Committee on Natural Resources and
Energy.

H. 237.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to the use value program,
and the bill was committed to the Committee on Finance.

H. 290.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to adult protective services,
and the bill was committed to the Committee on Health and Welfare.

H. 298.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to standardized ballots and vote tabulators,
and the bill was committed to the Committee on Government Operations.

H. 378.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to town payments of county taxes,
and the bill was committed to the Committee on Government Operations.

H. 453.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to the annual tax expenditure budget,
and the bill was committed to the Committee on Finance.

H. 454.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to the administration and issuance of vital records,
and the bill was committed to the Committee on Government Operations.

Consideration Postponed

Senate bill entitled:

S. 181.

An act relating to school resource officers.
Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Proposal of Amendment; Bill Passed in Concurrence with Proposals of Amendment; Rules Suspended; Bill Messaged

H. 258.

House bill entitled:

An act relating to public participation in environmental enforcement proceedings.

Was taken up.

Thereupon, pending third reading of the bill, Senator Lyons on behalf of the Committee on Natural Resources and Energy moved that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 10 V.S.A. § 8002, by striking out subdivisions 13 and 14 in their entirety and inserting in lieu thereof the following:

(13) “Civil complaint” means an environmental citation issued by the secretary or the board for a violation of a statute listed under subsection 8003(a) of this title.

(14) “Federally authorized or delegated program” means an area of environmental regulation where the U.S. Environmental Protection Agency has authorized or delegated to Vermont primary regulatory responsibility, including the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act.

(15) “Post” means:

(A) placing a draft administrative order, assurance of discontinuance, or civil complaint or a final administrative order, assurance of discontinuance, or civil complaint on the website of the secretary if he or she initiates an enforcement action under this chapter or on the website of the board if it initiates an enforcement action; and

(B) providing public notice about the opportunity to:

(i) submit written comments regarding a draft administrative order, assurance of discontinuance, or civil complaint; or

(ii) request intervention in a final administrative order, assurance of discontinuance, or civil complaint.

Second: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. 10 V.S.A. § 8021 is added to read:

§ 8021. COST RECOVERY

(a) In addition to any existing authority, the secretary, in issuing an administrative order, emergency order, or assurance of discontinuance under this chapter, may recover monies expended from a special fund for a cleanup related to an environmental violation, provided that such recovered monies not exceed \$20,000.00.

(b) When monies are recovered under this section, they shall be deposited into the special fund from which they were expended.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Illuzzi, moved that the Senate further propose to the House to amend the bill by striking out Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. 10 V.S.A. § 8020 is added to read:

§ 8020. PUBLIC PARTICIPATION IN ENFORCEMENT

(a) Aggrieved person. As used in this section, an “aggrieved person” means a person who alleges an injury to a particularized interest protected by a statute listed under subsection 8003(a) of this section, and the alleged injury is attributable to a violation addressed by an assurance of discontinuance, administrative order, emergency order, or civil complaint issued under this chapter. An organization or association is an aggrieved person under this section when one or more of its members would be an aggrieved person in his or her own right, the interests at stake are germane to the purposes of the organization or association, and neither the claim asserted nor the relief requested by the organization or association requires participation of the individual member.

(b) Draft and final action. Prior to issuing an administrative order, assurance of discontinuance, or civil complaint under this chapter and sending it to the environmental division, the secretary or the board shall post a draft copy of the administrative order, assurance of discontinuance, or civil complaint for public notice and written comment for 30 days. At the conclusion of the 30-day notice and written comment period, the secretary or the board shall evaluate the proposed action pursuant to the written comments received. After the evaluation of the written comments, the secretary or the board may withdraw an administrative order, assurance of discontinuance, or civil complaint. At the conclusion of the 30-day notice period, if no comments have been received, the secretary or the board shall file the draft as a final

administrative order, assurance of discontinuance, or civil complaint with the environmental division, and the environmental division may review and approve as an order of the court the administrative order, assurance of discontinuance, or civil complaint as set out elsewhere in this chapter. When the secretary or board issues a final administrative order, assurance of discontinuance, or civil complaint, it shall be sent to the environmental division along with any written comments received during the 30-day comment period. Concurrent with filing with the environmental division, the secretary or board shall post the final proposed action for public notice for 14 days.

(c) Filing with court. The environmental division shall hold the administrative order, assurance of discontinuance, or civil complaint for 14 days from the date of filing to allow any person who has filed written comments under subsection (b), who is not satisfied with the final action of the agency or the board, and who meets the definition of “aggrieved person” under subsection (a) of this section to file a motion for permissive intervention pursuant to the procedure in Rule 24(c) of the Vermont Rules of Civil Procedure.

(d) Court action without motion to intervene. At the conclusion of the 14-day period, if no motion to intervene has been filed, the environmental division shall take into consideration any comments received and in its discretion, with or without a hearing, shall issue an order to affirm, vacate, or remand the administrative order, assurance of discontinuance, or civil complaint.

(e) Condition precedent to intervention. In order for a person to intervene permissively in an administrative order, assurance of discontinuance, or civil complaint, the person shall have filed written comments with the agency or board setting out the specific objection to the proposed action during the 30-day comment period required under subsection (b) of this section.

(f) Court action upon motion to intervene. A motion for permissive intervention shall clearly state the basis for the claim that the administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter. A hearing may be held on the motion for permissive intervention in the discretion of the environmental division. When the environmental division determines that a motion to intervene fails to meet the requirements for permissive intervention, the court shall deny the motion.

(g) Emergency administrative order. When the secretary issues an emergency administrative order, the prefiling public notice and comment provisions contained in this section shall not apply. The environmental

division, without comment or hearing, shall act on the emergency administrative order as required by section 8009 of this title and may issue its own order. The secretary shall publish the emergency administrative order concurrent with filing it with the environmental division. A person shall have 14 days from the date the emergency administrative order is filed to file a motion for permissive intervention. A motion to intervene shall not stay an emergency administrative order.

(h) Standard of review on motion to intervene. The environmental division shall evaluate a motion from an aggrieved person for permissive intervention in light of Rule 24(b)(1) of the Vermont Rules of Civil Procedure. When the environmental division permits an aggrieved person to intervene, it shall be for the sole purpose of establishing that the terms of an administrative order, emergency administrative order, assurance of discontinuance, or civil complaint are insufficient to carry out the purposes of this chapter. The intervenor shall have the burden of proof by a preponderance of the evidence that the administrative order, emergency administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter. A hearing may be held on the claim that the administrative order, emergency administrative order, assurance of discontinuance, or civil complaint is insufficient to carry out the purposes of this chapter in the discretion of the environmental division. The environmental division upon finding that the proposed action is insufficient to carry out the purposes of this chapter shall inform the parties in writing and shall include the basis of its decision and shall vacate the proposed action.

(i) Authority of secretary to object. The secretary or board shall not oppose any motion filed for permissive intervention. When the environmental division permits a person to intervene, the secretary, the board, or the respondent may oppose the intervenor's claim that the proposed action is insufficient to carry out the purposes of this chapter.

(j) Response to citizen complaints. The secretary shall investigate all citizen complaints of a violation of a federally authorized or delegated program and shall respond to known complainants in writing.

Which was agreed to.

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

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

Bill Ordered to Lie**S. 245.**

Senator Baruth, for the Committee on Education, to which was referred Senate bill entitled:

An act relating to requiring cardiovascular care instruction as a secondary school graduation requirement.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. § 906 is amended to read:

§ 906. COURSE OF STUDY

(a) In public schools, approved and recognized independent schools, and ~~in~~ home study programs, learning experiences shall be provided for pupils in the minimum course of study.

(b) For purposes of this title, the minimum course of study means learning experiences adapted to a pupil's age and ability in the fields of:

* * *

(3) Physical education and comprehensive health education pursuant to §§ 131–135 of this title, including the effects of tobacco, alcoholic drinks, and drugs on the human system and on society and including instruction in cardiopulmonary resuscitation and the use of automated external defibrillators;

* * *

Sec. 2. 16 V.S.A. § 131 is amended to read:

§ 131. DEFINITIONS

For the purposes of this subchapter, “comprehensive health education” means a systematic and extensive elementary and secondary educational program designed to provide a variety of learning experiences based upon knowledge of the human organism as it functions within its environment. The term includes the study of:

* * *

(3) Safety including:

(A) first aid, disaster prevention, and accident prevention; and

(B) cardiopulmonary resuscitation and the use of automated external defibrillators;

* * *

Sec. 3. 16 V.S.A. § 133 is amended to read:

§ 133. SUPERVISOR; CURRICULA

(a) The commissioner with the approval of the state board may appoint one qualified person to supervise the preparation of appropriate curricula for use in the public schools, to promote programs for the preparation of teachers to teach these curricula, and to assist in the development of comprehensive health education programs.

~~(b) The commissioner shall evaluate and report the status of the comprehensive health education program as defined above to the board of education and to the chairmen of the house and senate committees on education no later than January 15, 1979. [DELETED]~~

(c) Vermont school districts may include a module within the secondary school health class curricula relating to cervical cancer and the human papillomavirus. The department of education shall work with relevant medical authorities to update the current model module to reflect up-to-date information and practices for health education in this area.

(d) Instruction in cardiopulmonary resuscitation and the use of automated external defibrillators shall be offered to all students at the secondary school level and:

(1) shall be a program based on current, nationally recognized guidelines and developed by the American Heart Association, the American Red Cross, or another nationally recognized entity;

(2) shall include practical, skills-based experiences and assessments to support cognitive learning; and

(3) if successful completion of the program will result in certification of the student to perform cardiopulmonary resuscitation or to use an automated external defibrillator, shall be taught by a certified instructor.

Sec. 4. 16 V.S.A. § 212 is amended to read:

§ 212. COMMISSIONER'S DUTIES GENERALLY

The commissioner shall execute those policies adopted by the state board in the legal exercise of its powers and shall:

* * *

(18) Annually inform superintendents and principals of regional resources available to assist schools to provide instruction in cardiopulmonary resuscitation and the use of automated external defibrillators.

Sec. 5. EFFECTIVE DATE; IMPLEMENTATION

(a) This act shall take effect on passage.

(b) Schools shall begin providing instruction in cardiopulmonary resuscitation and the use of automated external defibrillators as required in this act no later than the 2013–2014 academic year.

And that after passage the title of the bill be amended to read:

An act relating to requiring cardiovascular care instruction in public and independent schools.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, Senator Baruth, on behalf of the Committee on Education, moved that the recommendation of amendment of the Committee on Education be amended by striking out Sec. 1 in its entirety.

Thereupon, on motion of Senator Mazza the bill was ordered to lie, on a division of the Senate, Yeas 19, Nays 4.

Joint Resolutions Adopted on the Part of the Senate

Joint Senate resolutions entitled:

J.R.S. 41. Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

J.R.S. 42. Joint resolution relating to establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality vote by the General Assembly in 2012.

Having been placed on the Calendar for action, were taken up and adopted severally on the part of the Senate.

Message from the House No. 16

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. 464. An act relating to hydraulic fracturing wells for natural gas and oil production.

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

Adjournment

Senator Mazza moved that the Senate adjourned, to reconvene on Tuesday, February 7, 2012, at nine o'clock in the forenoon pursuant to J.R.S. 43.

Thereupon, pending the question, Shall the Senate adjourn until February 7, 2012, at nine o'clock in the forenoon pursuant to J.R.S. 43?, Senator Sears moved that the motion be amended to strike out the following: "nine o'clock" and inserting in lieu thereof the following: nine o'clock and thirty minutes

Which was agreed to.

Thereupon, the Senate adjourned, to reconvene on Tuesday, February 7, 2012, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 43.