

# Journal of the Senate

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FRIDAY, FEBRUARY 24, 2012

In the absence of the President (who was Acting Governor in the absence of the Governor) the Senate was called to order by the President *pro tempore*.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Message from the House No. 28

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. 634.** An act relating to remedies for failure to pay municipal tickets.

**H. 753.** An act relating to encouraging school districts and supervisory unions to provide services cooperatively or to consolidate governance structures.

**H. 760.** An act relating to lowering to 16 the age of consent for blood donation.

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. 48.** Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

## Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

**S. 251.**

By the Committee on Transportation,

An act relating to miscellaneous amendments to laws pertaining to motor vehicles.

**Bill Referred to Committee on Appropriations****S. 209.**

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to naturopathic physicians.

**Bills Referred**

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

**H. 634.**

An act relating to remedies for failure to pay municipal tickets.

To the Committee on Judiciary.

**H. 753.**

An act relating to encouraging school districts and supervisory unions to provide services cooperatively or to consolidate governance structures.

To the Committee on Education.

**H. 760.**

An act relating to lowering to 16 the age of consent for blood donation.

To the Committee on Health and Welfare.

**Bill Amended; Third Reading Ordered****S. 217.**

Senator Ashe, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to closely held benefit corporations.

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

Sec. 1. 11A V.S.A. chapter 21 is amended to read:

CHAPTER 21. BENEFIT CORPORATIONS

\* \* \*

§ 21.03. DEFINITIONS

(a) As used in this chapter:

\* \* \*

(2) “Benefit director” means:

(A) a director designated as a benefit director of a benefit corporation as provided in section 21.10 of this title; or

(B) a person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the articles of incorporation or shareholder agreement of a close corporation pursuant to section 21.10(e) of this title.

\* \* \*

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

(a) Each director of a benefit corporation, in discharging his or her duties as a director, including the director’s duties as a member of a committee:

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) the local and global environment; and

(F) the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;

(2) may consider any other pertinent factors or the interests of any other group that the director determines are appropriate to consider;

(3) shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to interests related to the accomplishment of its general or specific public benefit purpose in its articles of incorporation purposes; and

(4) shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.

\* \* \*

(e) ~~A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title.~~ A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary. If a benefit corporation has adopted a provision in its articles of incorporation authorized by section 2.02(b)(4) of this title, the provision shall also apply to a failure by a director to discharge his or her duties in accordance with this chapter.

#### § 21.10. BENEFIT DIRECTOR

(a) ~~The~~ Except as provided in subsection (e) of this section, the board of directors of a benefit corporation shall include at least one director who shall be designated a "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

\* \* \*

(e) If the articles of incorporation of a benefit corporation that is a close corporation dispense with a or restrict the discretion or powers of the board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation ~~shall provide that or the shareholder agreement shall specify~~ the persons who ~~perform the duties of a board of directors shall include at least one person with~~ shall exercise the powers, duties, and rights, and immunities of a of the board of directors and the benefit director, as provided in this chapter. A person who exercises one or more of the powers, duties, or rights of a benefit director pursuant to this subsection:

(1) is not required to be independent of the benefit corporation;

(2) shall have the immunities of a benefit director;

(3) may share the powers, duties, and rights of a benefit director with one or more other persons; and

(4) shall not be subject to the procedures for election or removal of directors provided in subchapter 1 of chapter 8 of this title unless the person is also a director of the benefit corporation or the articles of incorporation or shareholder agreement make those procedures applicable.

\* \* \*

#### § 21.11. STANDARD OF CONDUCT FOR OFFICERS

\* \* \*

~~(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.~~

(f) The articles of incorporation of a benefit corporation may set forth a provision eliminating or limiting the liability of an officer to the benefit corporation or its shareholders for money damages for any action taken, or any failure to take any action, solely as an officer, based on a failure to discharge his or her own duties in accordance with this chapter, except liability for:

(1) the amount of a financial benefit received by an officer to which the officer is not entitled;

(2) an intentional or reckless infliction of harm on the benefit corporation or its shareholders; or

(3) an intentional or reckless criminal act.

\* \* \*

#### § 21.14. ANNUAL BENEFIT REPORT

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(e) If a benefit corporation is a close corporation that has dispensed with or restricted the discretion or powers of the board of directors, the annual benefit report shall describe the person or persons who exercise the powers, duties, and rights and have the immunities of the board of directors and the benefit director.

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, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

**Bill Amended; Third Reading Ordered**

**S. 237.**

Senator Pollina, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the genuine progress indicator.

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

**Sec. 1. PURPOSE AND INTENT**

(a) Purpose. The purpose of the genuine progress indicator (“GPI”) is to measure the state of Vermont’s economic, environmental, and societal well-being as a supplement to the measurement derived from the gross state product.

(b) Intent. It is the intent of the general assembly that once established, the GPI will assist state government in decision-making by providing an additional basis for budgetary decisions, including outcomes-based budgeting; measuring progress in the application of policy and programs; and as a tool to identify public policy priorities.

**Sec. 2. GENUINE PROGRESS INDICATOR**

(a) Establishment; maintenance.

(1) The secretary of administration shall accept the offer of the Gund Institute for Ecological Economics of the University of Vermont (the “Gund Institute”) to work in cooperation to establish, and shall thereafter make use of and maintain, the genuine progress indicator (GPI). In establishing the GPI, the secretary of administration, in cooperation with the Gund Institute, shall create a Vermont data committee to inventory existing datasets and to make recommendations that may be useful to all data users in Vermont’s state government, nonprofits, and businesses.

(2) The GPI shall add positive factors and subtract negative factors that are not counted by standard gross state product accounting practices.

(3) The GPI shall use standard genuine progress indicator methodology and additional factors to enhance the indicator, including basic human rights principles.

(b) Accessibility. Once established, the GPI and its underlying datasets that are submitted by the Gund Institute to the secretary of administration shall be posted on the state of Vermont website.

(c) Updating data. The secretary of administration shall cooperate in providing data to the Gund Institute as necessary in order to update and maintain the GPI.

## Sec. 3. REPORT

By January 1, 2019, the secretary of administration shall report to the house and senate committees on government operations regarding the usefulness of the genuine progress indicator.

## Sec. 4. DATASETS

Any datasets submitted by the Gund Institute to the secretary of administration pursuant to this act shall be considered a public record under chapter 5 of Title 1.

## Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

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, and pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, Senator Nitka moved to amend the recommendation of the Committee on Government Operations by adding a new section to be numbered Sec. 3a to read as follows:

## Sec. 3a. PROGRESS REPORT

By January 15, 2015, the secretary of administration shall submit to the house and senate committees on government operations a progress report regarding the GPI.

Which was agreed to.

Thereupon, the recommendation of amendment, of the Committee on Government Operations, as amended, was agreed to and third reading of the bill was ordered.

**Third Reading Ordered****H.C.R. 255.**

Senator Flory, for the Committee on Transportation, to which was referred House concurrent resolution entitled:

House concurrent resolution urging the restoration of intercity bus service to Rutland City.

Reported that the resolution ought to pass in concurrence.

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

**Bill Amended; Third Reading Ordered**

**S. 112.**

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to bail for persons charged with lewd and lascivious conduct with a child.

Reported recommending that the bill be amended by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

**Sec. 2. EFFECTIVE DATE**

This act shall taken effect on passage.

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, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

**Joint Resolution Adopted in Concurrence****J.R.H. 24.**

Joint House resolution entitled:

Joint resolution strongly supporting continuing and enhancing the mutually beneficial bilateral economic and trade relationship between the state of Vermont and Canada.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

**Appointment Confirmed**

The following Gubernatorial appointment was confirmed separately by the Senate, upon full report given by the Committee to which it was referred:

Walsh, Thomas of Charlotte – Environmental Court Judge – December 12, 2011, to March 31, 2014.

**Rules Suspended; Committee Relieved of Further Consideration; Bill Committed****S. 209.**

On motion of Senator Ayer, the rules were suspended, and S. 209 was taken up for immediate consideration, for the purpose of relieving the Committee on Appropriations from further consideration of the bill. Thereupon, pending entry on the Calendar for notice tomorrow, the Senate bill entitled:

An act relating to naturopathic physicians,



on motion of Senator Ayer, was committed to the Committee on Health and Welfare with the report of the Committee on Appropriations, *intact*.

#### **Senate Concurrent Resolution**

The following joint concurrent resolution, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, was adopted on the part of the Senate:

By Senators Doyle, Cummings and Pollina,

By Representative Ancel,

#### **S.C.R. 38.**

Senate concurrent resolution honoring the six fire chiefs past and present who have given over 280 years of combined service to the Marshfield Volunteer Fire Department.

#### **House Concurrent Resolutions**

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were adopted in concurrence:

By Representative Corcoran and others,

By Senators Sears and Hartwell,

#### **H.C.R. 272.**

House concurrent resolution congratulating Harriette B. Lerrigo-Leidich of North Bennington on her 100th birthday.

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By Representative Mrowicki and others,

**H.C.R. 273.**

House concurrent resolution designating February 29, 2012 as Afterschool, Summer, and Expanded Learning Day at the State House.

By Representative O'Sullivan and others,

By Senators Ayer, Baruth, Giard and Lyons,

**H.C.R. 274.**

House concurrent resolution in memory of Garry Chalmers Simpson, a master of the cinematic, performing, and television arts.

By Representative Kupersmith and others,

By All Members of the Senate,

**H.C.R. 275.**

House concurrent resolution in memory of former Representative Carl H. Reidel of North Ferrisburgh.

By Representative Lippert,

**H.C.R. 276.**

House concurrent resolution commemorating the 250th anniversary of the town of Hinesburg.

By Representative Klein,

**H.C.R. 277.**

House concurrent resolution in memory of former East Montpelier Town Clerk and Treasurer Sylvia Tosi.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, February 28, 2012, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 48.