

Journal of the House

Thursday, February 27, 2014

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

Devotional Exercises

Devotional exercises were conducted by Pastor Brad Keller of Journey Church, South Royalton and Rutland, Vt.

Message from Governor

A message was received from His Excellency, the Governor, by Mr. Louis Porter, Secretary of Civil and Military Affairs, as follows:

Mr. Speaker:

I am directed by the Governor to inform the House that on the twenty-fifth day of February, 2014, he approved and signed a bill originating in the House of the following title:

H. 655 An act relating to fiscal year 2014 budget adjustments

House Bills Introduced

H. 865

By Reps. Zagar of Barnard, Bartholomew of Hartland, Christie of Hartford, Bissonnette of Winooski, Branagan of Georgia, Campion of Bennington, Cole of Burlington, Dakin of Chester, Deen of Westminster, Donahue of Northfield, Fay of St. Johnsbury, French of Randolph, Hooper of Montpelier, Hoyt of Norwich, Huntley of Cavendish, Juskiewicz of Cambridge, Lanpher of Vergennes, Lawrence of Lyndon, Martin of Springfield, McCarthy of St. Albans City, O'Sullivan of Burlington, Potter of Clarendon, Rachelson of Burlington, Savage of Swanton, Spengler of Colchester, Stevens of Waterbury, Till of Jericho, Toll of Danville, Townsend of South Burlington, Van Wyck of Ferrisburgh, Vowinkel of Hartford and Waite-Simpson of Essex,

House bill, entitled

An act relating to updating the Agency of Transportation's structures design standards;

To the committee on Transportation.

H. 866

By the committee on Judiciary,

An act relating to qualifications of judicial officers and judicial selection and retention;

Under the rule, placed on the Calendar for notice.

House Resolution Placed on Calendar**H.R. 14**

House resolution, entitled

House resolution relating to federal regulation of the propane market

Offered by: Representative Martin of Wolcott

Whereas, propane serves a critical role in fulfilling Vermont's energy and heating needs, and

Whereas, 15 percent of Vermonters depend on propane as the primary heating fuel for their homes, and

Whereas, the propane market is largely unregulated by the federal government which allows for rapid and extreme fluctuations in the market-regulated propane prices and unbridled exports because propane exports are not subject to federal oversight in the same fashion as oil and natural gas exports; this has greatly driven up domestic propane prices because domestic users of propane must now compete with the highest bidders in the global market, and

Whereas, according to the U.S. Energy Information Administration's Heating Oil and Propane Update dated February 12, 2014, the price of residential propane has increased by more than \$1.40 per gallon, an increase of 62 percent in the time between October 2013 and February 2014, and

Whereas, according to the U.S. Energy Information Administration's Heating Oil and Propane Update dated February 12, 2014, the price of residential propane is \$1.45 per gallon higher, or an increase of 63 percent from what it was in February 2013, and

Whereas, the TEPPCO pipeline, which until 2013 provided the Northeast United States with up to 44 percent of its propane needs from a propane source in Texas, is no longer available for this purpose. The Federal Energy Regulatory Commission granted permission to the owner of the pipeline to reverse the flow of this pipeline to transfer natural gas from North to South for export from the Gulf of Mexico. Some of the resulting shortage is being made

up by sea shipments of expensive propane from Norway and Algeria. Further, more supply and pricing pressure is likely as Kinder Morgan, Inc. implements its plans to reverse the flow of the Cochin pipeline in July 2014, cutting off Canadian supplies of propane to the Midwest so natural gas can be exported by pipeline to Canada, and

Whereas, the market is not effectively managing wholesale pricing of propane, which has increased by 112 percent from October 2013 to February 2014. This leads to decreased profit margins for propane retailers and to much higher prices for end consumers, and

Whereas, the United States now exports much more propane than it imports according to EIA report dated February 12, 2014. In January 2014, the United States exported 366,000 bbls/day compared with 138,000 bbls/day in January 2013. This is being accomplished using infrastructure historically available to the domestic market and represents an increase of 228,000 bbls/day or 165 percent. In January 2014, the United States imported 140,000 bbls/day compared with 150,000 bbls/day in January 2013, now therefore be it

Resolved by the House of Representatives:

That this legislative body finds the market of propane to be unsuited to market-based regulation and requests that federal regulation of propane exports and distribution be instituted such that the propane shipment infrastructure, including the TEPPCO and Cochin pipelines and other supporting infrastructure, is restructured to resemble the configuration existing before the modifications beginning in May 2013. Federal control of the propane market should be implemented regardless of the impact it may have on exports. If it can be shown to the satisfaction of the Secretary of Commerce and the Commissioner of the Federal Energy Regulatory Commission that unbridled exports can be resumed without negatively impacting supply or pricing to the domestic market, exports of propane should be permitted to resume, and be it further

Resolved: That this legislative body respectfully requests the President of the United States, the U.S. Congress, and the Federal Energy Regulatory Commission to enact laws to control pricing and force transparency of the propane industry, and be it further

Resolved: That the Clerk of the House be directed to send a copy of this resolution to President Barack Obama, the Vermont Congressional Delegation, Secretary of Commerce Penny Pritzker, and Acting Chairman Cheryl Laflour of the Federal Energy Regulatory Commission.

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

House Resolution Placed on Calendar

H.R. 15

House resolution, entitled

House resolution commemorating the Battle of the Wilderness

Offered by: Representatives Devereux of Mount Holly, Jerman of Essex, Marek of Newfane, and Branagan of Georgia

Whereas, the Battle of the Wilderness, the first battle of Ulysses Grant's Overland Campaign, was fought 150 years ago, May 5–7, 1864, in an area of northern Virginia known locally as the Wilderness, and

Whereas, the First Vermont Brigade was part of George Washington Getty's Sixth Corps Division of the Army of the Potomac, and

Whereas, Getty's Division at midday on May 5, 1864, was ordered to defend the strategically vital intersection of Brock and Orange Plank roads, and

Whereas, the Vermont Brigade held the left flank of the Division's line which was ordered to advance at 4:00 p.m., and

Whereas, on entering the densely wooded Wilderness, the Brigade, although ripped by heavy Confederate volleys, held its position until darkness, suffering 1,000 casualties, and

Whereas, the Vermont Brigade attacked again on May 6, bringing its two-day casualty total to 1,234, and

Whereas, the intersection of Brock and Orange Plank roads was held, and the Army of the Potomac was able to continue the Overland Campaign that would place a death grip on Petersburg and lead ultimately to a Union Victory in the Civil War, and

Whereas, at the Battle of the Wilderness, Vermont suffered, by far, its greatest number of casualties in a single Civil War battle, and

Whereas, a monument stands on the hallowed ground where the Vermonters fought, a site now preserved as part of The Fredericksburg and Spotsylvania National Military Park, now therefore be it

Resolved by the House of Representatives:

That this legislative body commemorates the Battle of the Wilderness and the bravery of the Vermonters who fought to defend the Union and defeat slavery, and be it further

Resolved: That this legislative body requests that on May 5, 2014, at 4:00 p.m., bells throughout Vermont be tolled for ten minutes in honor of the First Vermont Brigade's heroic stand at the Wilderness, and be it further

Resolved: That this legislative body requests that a wreath bearing the Freedom and Unity Seal of the State of Vermont be placed at the Vermont Brigade Monument on the Wilderness Battlefield at 4:00 p.m. on May 5, 2014, and be it further

Resolved: That this legislative body requests that its members inform their assembled town meetings of this resolution, and be it further

Resolved: That the Clerk of the House be directed to send a copy of this resolution to the Vermont Civil War Sesquicentennial Commission and the Vermont Historical Society.

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

Third Reading; Bill Passed

H. 863

House bill, entitled

An act relating to a Public Records Act exemption for the identity of whistleblowers

Was taken up, read the third time and passed.

Third Reading; Bill Passed in Concurrence

S. 317

Senate bill, entitled

An act relating to repealing the unconstitutional Vermont statutes related to the performance of abortions

Was taken up, read the third time and passed in concurrence.

Consideration Interrupted by Recess

H. 217

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

An act relating to smoking in partially enclosed structures, lodging establishments, and state lands

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

Sec. 1. 18 V.S.A. § 1421 is amended to read:

§ 1421. SMOKING IN THE WORKPLACE; PROHIBITION

(a) The use of lighted tobacco products is prohibited in any workplace.

(b)(1) ~~For the purposes of~~ As used in this subchapter, “workplace” means an enclosed structure where employees perform services for an employer ~~or, in, including restaurants, bars, and other establishments in which food or drinks, or both, are served.~~ In the case of an employer who assigns employees to departments, divisions, or similar organizational units, “workplace” means the enclosed portion of a structure to which the employee is assigned.

* * *

(3) For schools, workplace includes any enclosed location where instruction or other school-sponsored functions are occurring ~~and students are present.~~

(4) For lodging establishments used for transient traveling or public vacationing, such as resorts, hotels, and motels, workplace includes the sleeping quarters and adjoining rooms rented to guests.

* * *

Sec. 2. 18 V.S.A. § 1741 is amended to read:

§ 1741. DEFINITIONS

As used in this chapter:

* * *

(2) “A place of public access” means any place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which the general public has access or which the general public uses, ~~including.~~ The term includes:

(A) buildings;

(B) offices;

(C) means of transportation;

-
- (D) common carrier waiting rooms;
 - (E) arcades;
 - (F) restaurants, bars, and cabarets;
 - (G) retail stores;
 - (H) grocery stores;
 - (I) libraries;
 - (J) theaters, concert halls, auditoriums, and arenas;
 - (K) barber shops, and hair salons;
 - (L) laundromats;
 - (M) shopping malls;
 - (N) museums, and art galleries;
 - (O) sports and fitness facilities;
 - (P) planetariums;
 - (Q) historical sites;
 - (R) lodging establishments for transient traveling or public vacationing, such as resorts, hotels, and motels;
 - (S) common areas of nursing homes, and hospitals, ~~resorts, hotels and motels,~~ including the lobbies, hallways, elevators, restaurants, restrooms, and cafeterias; and
 - (T) buildings or facilities owned or operated by a social, fraternal, or religious club.

(3) “Hospital” means a place devoted primarily to the maintenance and operation of diagnostic and therapeutic facilities for inpatient medical or surgical care of individuals suffering from illness, disease, injury, or deformity, or for obstetrics.

(4) “Publicly owned buildings and offices” means enclosed indoor places or portions of such places owned, leased, or rented by ~~state~~ State, county, or municipal governments, or by agencies supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, ~~state~~ State, county, or municipal taxes.

Sec. 3. 18 V.S.A. § 1742 is amended to read:

§ 1742. RESTRICTIONS ON SMOKING IN PUBLIC PLACES

(a) The possession of lighted tobacco products in any form is prohibited in:

(1) the common areas of all enclosed indoor places of public access and publicly owned buildings and offices;

(2) designated smoke-free areas of property or grounds owned by or leased to the State; and

(3) any other area within 25 feet of State-owned buildings and offices, except that to the extent that any portion of the 25-foot zone is not on State property, smoking is prohibited only in that portion of the zone that is on State property unless the owner of the adjoining property chooses to designate his or her property smoke-free.

(b) The possession of lighted tobacco products in any form is prohibited on the grounds of any hospital or secure residential recovery facility owned or operated by the State, including all enclosed places in the hospital or facility and the surrounding outdoor property.

(c) Nothing in this section shall be construed to restrict the ability of residents of the Vermont Veterans' Home to use lighted tobacco products in the indoor area of the facility in which smoking is permitted.

Sec. 4. 16 V.S.A. § 140 is amended to read:

§ 140. TOBACCO USE PROHIBITED ON PUBLIC SCHOOL GROUNDS

No person shall be permitted to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on public school grounds ~~and no student shall be permitted to use tobacco~~ or at public school sponsored functions. Each public school board shall adopt policies prohibiting the possession and use of tobacco products and tobacco substitutes by students at all times while under the supervision of school staff. These policies shall include confiscation and appropriate referrals to law enforcement authorities.

Sec. 5. 33 V.S.A. § 3504 is added to read:

§ 3504. TOBACCO USE PROHIBITED AT CHILD CARE FACILITIES

(a) No person shall be permitted to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time.

(b) No person shall be permitted to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and in any outdoor area designated for child care, of a licensed or registered family child care home while children are present and in care. If smoking occurs on the premises during other times, the family child care home shall notify

prospective families prior to enrolling a child in the family child care home that their child will be exposed to an environment in which tobacco products or tobacco substitutes, or both, are used.

Sec. 6. 7 V.S.A. § 1001 is amended to read:

§ 1001. DEFINITIONS

As used in this chapter:

* * *

(8) “Tobacco substitute” means products including electronic cigarettes or other electronic or battery-powered devices that contain and are designed to deliver nicotine or other substances into the body through inhaling vapor and that have not been approved by the ~~United States~~ U.S. Food and Drug Administration for tobacco cessation or other medical purposes. Products that have been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes shall not be considered to be tobacco substitutes.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

and that after passage the title of the bill be amended to read: “An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands”.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the recommendation of proposal of amendment offered by the committee on Human Services be agreed to? **Reps. Komline of Dorset, Burditt of West Rutland, Clarkson of Woodstock, Conquest of Newbury, Devereux of Mount Holly, Koch of Barre Town, Masland of Thetford, Mitchell of Fairfax, Ram of Burlington, Sharpe of Bristol, Stevens of Shoreham, and Wilson of Manchester** moved to amend the recommendation of proposal of amendment offered by the committee on Human Services as follows:

By renumbering Sec. 7, effective date, to be Sec. 8 and by adding a new Sec. 7 to read:

Sec. 7. 23 V.S.A. § 1134b is added to read:

§ 1134b. SMOKING IN MOTOR VEHICLE WITH CHILD PRESENT

(a) A person shall not possess a lighted tobacco product in a motor vehicle that is occupied by a child required to be properly restrained in a federally approved child passenger restraining system pursuant to subdivision 1258(a)(1) or (2) of this title.

(b) A person who violates subsection (a) of this section shall be subject to a fine of not more than \$100.00. No points shall be assessed for a violation of this section.

Which was agreed to.

Pending the question, Shall the recommendation of proposal of amendment offered by the committee on Human Services be agreed to? **Rep. Till of Jericho** moved to amend the recommendation of proposal of amendment offered by the committee on Human Services as follows:

By striking Sec. 7, effective date, and inserting in lieu thereof the following:

Sec. 7. FINDINGS

(a) Every day more than 1,200 persons in the United States die due to smoking. And every day at least 3,800 youths or young adults become regular smokers.

(b) The younger an individual is when he or she begins using tobacco, the more likely he or she will become addicted. Among youths who persist in smoking, one-third will die prematurely due to smoking.

(c) Compared with adults, adolescents appear to display evidence of addiction at much lower levels of cigarette consumption, and their attempts to quit smoking thus may be less successful.

(d) Persons 18 through 20 years of age are responsible for 90 percent of the cigarettes purchased on behalf of minors under 18 years of age. If their legal access is curtailed, the benefit will extend to much younger teens.

(e) Prevention efforts must focus on young adults 18 through 25 years of age. Almost no one starts smoking after 25 years of age. Nearly nine out of 10 smokers began smoking by 18 years of age, and 99 percent started by 26 years of age. Progression from occasional to daily smoking almost always occurs by 26 years of age.

(f) Of all young adults 18 to 25 years of age in Vermont who had never smoked, 12.1 percent smoked a cigarette for the first time in 2008–2009. Vermont ranked 49th in the nation, with a range of 4.2 percent to 14.7 percent among the states.

Sec. 8. 7 V.S.A. § 1003 is amended to read:

§ 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;
TOBACCO PARAPHERNALIA; REQUIREMENTS;
PROHIBITIONS

(a)(1) A Except as provided in subdivision (2) of this subsection, a person shall not sell or provide tobacco products, tobacco substitutes, or tobacco paraphernalia to any person younger than 18 under 21 years of age.

(2) A person shall not sell or provide tobacco products, tobacco substitutes, or tobacco paraphernalia to any current member of the U.S. Armed Forces under 18 years of age.

* * *

Sec. 9. 7 V.S.A. § 1004 is amended to read:

§ 1004. PROOF OF AGE FOR THE SALE OF TOBACCO PRODUCTS;
TOBACCO SUBSTITUTES; TOBACCO PARAPHERNALIA

(a) A person shall exhibit proper proof of his or her age upon demand of a person licensed under this chapter, an employee of a licensee, or a law enforcement officer. If the person fails to provide such proof of age, the licensee shall be entitled to refuse to sell tobacco products, tobacco substitutes, or tobacco paraphernalia to the person. The sale or furnishing of tobacco products, tobacco substitutes, or tobacco paraphernalia to a person exhibiting proper proof shall be prima facie evidence of a licensee's compliance with section 1007 of this title.

(b) As used in this section, "proper proof" means a photographic motor vehicle operator's license, a valid passport, a ~~United States~~ U.S. Military identification card or a photographic nondriver motor vehicle identification card obtained from the ~~department of motor vehicles~~ Department of Motor Vehicles. For a person between 18 and 21 years of age purchasing tobacco products, tobacco substitutes, or tobacco paraphernalia pursuant to subdivision 1003(a)(2) of this title, "proper proof" means a photographic U.S. Military identification card showing the person is a current member of the U.S. Armed Forces. A U.S. Military dependent's identification and privilege card shall not constitute proper proof under this section.

Sec. 10. 7 V.S.A. § 1005 is amended to read:

§ 1005. ~~PERSONS UNDER THE AGE OF 18~~ 21 YEARS OF AGE;
POSSESSION OF TOBACCO PRODUCTS; MISREPRESENTING
AGE OR PURCHASING TOBACCO PRODUCTS; PENALTY

(a)(1) A Except as provided in subdivision (2) of this subsection, a person under 18 21 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia unless the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, or tobacco paraphernalia to effect a sale in the course of employment. A person under 18 21 years of age shall not misrepresent his or her age to purchase or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia. A person who possesses tobacco products, tobacco substitutes, or tobacco paraphernalia in violation of this subsection shall be subject to having the tobacco products, tobacco substitutes, or tobacco paraphernalia immediately confiscated and shall be further subject to a civil penalty of \$25.00. In the case of failure to pay a penalty, the Judicial Bureau shall mail a notice to the person at the address in the complaint notifying the person that failure to pay the penalty within 60 days of the notice will result in either the suspension of the person's operator's license for a period of not more than 90 days or the delay of the initial licensing of the person for a period of not more than one year. A copy of the notice shall be sent to the Commissioner of Motor Vehicles, who, after expiration of 60 days from the date of notice and unless notified by the Judicial Bureau that the penalty has been paid shall either suspend the person's operator's license or cause initial licensing of the person to be delayed for the periods set forth in this subsection and the rules. An action under this subsection shall be brought in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24. The Commissioner of Motor Vehicles shall adopt rules in accordance with the provisions of 3 V.S.A. chapter 25 to implement the provisions of this subsection, which may provide for incremental suspension or delays not exceeding cumulatively the maximum periods established by this subsection.

(2) For current members of the U.S. Armed Forces, the provisions of subdivision (1) of this subsection shall apply to persons under 18 years of age.

(b) A person under 18 21 years of age, or, for a current member of the U.S. Armed Forces, under 18 years of age, who misrepresents his or her age by presenting false identification to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia shall be fined not more than \$50.00 or provide up to 10 hours of community service, or both.

Sec. 11. 7 V.S.A. § 1007 is amended to read:

§ 1007. FURNISHING TOBACCO TO PERSONS UNDER ~~EIGHTEEN~~
THE LEGAL AGE

An individual who sells or furnishes tobacco products, tobacco substitutes, or tobacco paraphernalia to a person under ~~18~~ 21 years of age, or to a current member of the U.S. Armed Forces under 18 years of age, shall be subject to a civil penalty of not more than \$100.00 for the first offense and not more than \$500.00 for any subsequent offense. An action under this section shall be brought in the same manner as for a traffic violation pursuant to 23 V.S.A. chapter 24 and shall be brought within 24 hours of the occurrence of the alleged violation.

Sec. 12. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) A Judicial Bureau is created within the Judicial Branch under the supervision of the ~~supreme court~~ Supreme Court.

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(4) Violations of 7 V.S.A. § 1005(a), relating to possession of tobacco products by a person ~~less than 18~~ under 21 years of age.

(5) Violations of 7 V.S.A. § 1007, relating to furnishing tobacco products to a person under ~~the age of 18~~ 21 years of age.

* * *

Sec. 13. 7 V.S.A. § 667(c) is amended to read:

(c) The provisions of subsection (b) of this section shall not apply to a violation of subsection 1005(a) of this title, relating to purchase of tobacco products by a person ~~less than 18~~ under 21 years of age.

Sec. 14. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

Recess

At two o'clock and thirteen minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

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

Consideration Resumed; Bill Amended and Third Reading Ordered
H. 217

Consideration resumed on House bill, entitled

An act relating to smoking in partially enclosed structures, lodging establishments, and state lands;

Thereupon, **Rep Till of Jericho** asked and was granted leave of the House to withdraw his amendment.

Pending the question, Shall the bill be amended as proposed by the Committee on Human Services, as further amended? **Rep. Frank of Underhill** 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 be amended as proposed by the Committee on Human Services, as further amended? was decided in the affirmative. Yeas, 100. Nays, 35.

Those who voted in the affirmative are:

Ancel of Calais	Haas of Rochester	McCarthy of St. Albans City
Bartholomew of Hartland	Head of South Burlington	McCormack of Burlington
Batchelor of Derby	Heath of Westford	McCullough of Williston
Bissonnette of Winooski	Hooper of Montpelier	McFaun of Barre Town
Botzow of Pownal	Hoyt of Norwich	Michelsen of Hardwick
Browning of Arlington	Huntley of Cavendish	Miller of Shaftsbury
Burditt of West Rutland	Jewett of Ripton	Mitchell of Fairfax
Burke of Brattleboro	Johnson of South Hero	Mook of Bennington
Carr of Brandon	Keenan of St. Albans City	Moran of Wardsboro
Clarkson of Woodstock	Kitzmiller of Montpelier	Mrowicki of Putney
Cole of Burlington	Klein of East Montpelier	Myers of Essex
Connor of Fairfield	Koch of Barre Town	Nuovo of Middlebury
Conquest of Newbury	Komline of Dorset	O'Brien of Richmond
Copeland-Hanzas of Bradford	Krebs of South Hero	O'Sullivan of Burlington
Cross of Winooski	Krowinski of Burlington	Partridge of Windham
Dakin of Chester	Kupersmith of South Burlington	Pearson of Burlington
Devereux of Mount Holly	Lanpher of Vergennes	Poirier of Barre City
Donahue of Northfield	Lenes of Shelburne	Potter of Clarendon
Ellis of Waterbury	Lewis of Berlin	Pugh of South Burlington
Emmons of Springfield	Lippert of Hinesburg	Ralston of Middlebury
Fagan of Rutland City	Macaig of Williston	Ram of Burlington
Fay of St. Johnsbury	Malcolm of Pawlet	Russell of Rutland City
Fisher of Lincoln	Manwaring of Wilmington	Ryerson of Randolph
Frank of Underhill	Marcotte of Coventry	Sharpe of Bristol
French of Randolph	Marek of Newfane	Shaw of Pittsford
Gallivan of Chittenden	Martin of Springfield	Spengler of Colchester
Grad of Moretown	Martin of Wolcott	Stevens of Waterbury
Greshin of Warren	Masland of Thetford	Stevens of Shoreham
		Sweaney of Windsor

Taylor of Barre City	Trieber of Rockingham	Wilson of Manchester
Till of Jericho	Van Wyck of Ferrisburgh	Wizowaty of Burlington
Toleno of Brattleboro	Vowinkel of Hartford	Yantachka of Charlotte
Toll of Danville	Waite-Simpson of Essex	Zagar of Barnard
Townsend of South Burlington	Webb of Shelburne Weed of Enosburgh	

Those who voted in the negative are:

Beyor of Highgate	Feltus of Lyndon *	Quimby of Concord
Bouchard of Colchester	Gage of Rutland City	Savage of Swanton
Branagan of Georgia	Goodwin of Weston	Scheuermann of Stowe
Brennan of Colchester	Hebert of Vernon	Shaw of Derby
Canfield of Fair Haven	Helm of Fair Haven	Smith of New Haven
Condon of Colchester	Higley of Lowell	South of St. Johnsbury
Consejo of Sheldon	Hubert of Milton	Strong of Albany
Corcoran of Bennington	Johnson of Canaan	Terenzini of Rutland Town
Davis of Washington	Larocque of Barnet	Turner of Milton
Dickinson of St. Albans Town	Lawrence of Lyndon	Winters of Williamstown
Donaghy of Poultney	Morrissey of Bennington *	Wright of Burlington
	Pearce of Richford	Young of Glover

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

Buxton of Tunbridge	Donovan of Burlington	Peltz of Woodbury
Campion of Bennington	Evans of Essex	Rachelson of Burlington
Christie of Hartford	Jerman of Essex	Stuart of Brattleboro
Cupoli of Rutland City	Juskiewicz of Cambridge	Woodward of Johnson
Deen of Westminster	Kilmartin of Newport City	

Rep. Feltus of Lyndon explained her vote as follows:

“Mr. Speaker:

While I support the restriction of smoking tobacco in work places and public spaces, I cannot endorse the exception carved out for the Vermont Veterans’ Home. Surely the residents and workers at that institution are as adversely affected by second hand smoke as are workers and members of the public in other locations.”

Rep. Morrissey of Bennington explained her vote as follows:

“Mr. Speaker:

I cannot vote for this bill at this time based on the committee not completing the committee jurisdiction process with Transportation. The marijuana health issues were also not addressed. I will wait until third reading to make my final vote.”

Thereupon, **Rep. Hubert of Milton** moved to commit the bill to the committee on Transportation, which was disagreed to on a Division vote: Yeas, 42. Nays, 79.

Thereupon, third reading was ordered.

Bill Amended; Third Reading Ordered

H. 497

Rep. Townsend of South Burlington, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to the open meeting law

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

Sec. 1. 1 V.S.A. § 310 is amended to read:

§ 310. DEFINITIONS

As used in this subchapter:

(1) “Deliberations” means weighing, examining, and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

(2) “Meeting” means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action. “Meeting” shall not mean written correspondence or an electronic communication, including e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that such a written correspondence or such an electronic communication that results in written or recorded information shall be available for inspection and copying under the Public Records Act as set forth in chapter 5, subchapter 3 of this title.

(3) “Public body” means any board, council, or commission of the ~~state~~ State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the ~~state~~ State or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils, or commissions, except that “public body” does not include councils or similar groups established by the ~~governor~~ Governor for the sole purpose of advising the ~~governor~~ Governor with respect to policy.

(4) “Publicly announced” means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the ~~state~~ State in which the public body has jurisdiction, and to any ~~editor, publisher, or news director~~ person who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.

(5) “Quasi-judicial proceeding” means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.

Sec. 2. 1 V.S.A. § 312 is amended to read:

§ 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under ~~section 313(a)(2)~~ subdivision 313(b)(1) of this title. ~~A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met.~~ A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. A public body shall electronically record by audio tape, all public hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of such ~~tapes~~ electronic recordings as described in section 316 of this title.

(2) Participation in meetings through electronic or other means.

(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.

(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body shall be taken by roll call.

(C) Each member who attends a meeting without being physically present at a designated meeting location shall:

- (i) identify himself or herself when the meeting is convened; and
- (ii) be able to hear the conduct of the meeting and be heard throughout the meeting.

(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the following additional requirements shall be met:

(i) At least 24 hours prior to the meeting, or as soon as practicable prior to an emergency meeting, the public body shall publicly announce the meeting, and a municipal public body shall post notice of the meeting in or near the municipal clerk's office and in at least two other public places in the municipality.

(ii) The public announcement and posted notice of the meeting shall designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

- (A) All members of the public body present;
- (B) All other active participants in the meeting;
- (C) All motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and
- (D) The results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place

of all public hearings and meetings scheduled by all Executive Branch State agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).

(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) ~~An editor, publisher or news director of any newspaper, radio station or television station serving the area of the state in which the public body has jurisdiction~~ A person may request in writing that a public body notify the ~~editor, publisher or news director~~ person of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d)(1) ~~The~~ At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda for a regular or special meeting shall be:

(A) posted to a website, if one exists, that the public body maintains or designates as the official website of the body; and

(B) in the case of a municipal public body, posted in or near the municipal office and in at least two other public places in the municipality.

(2) A meeting agenda shall be made available to the news media or concerned persons a person prior to the meeting upon specific request.

(3)(A) Any addition to or deletion from the agenda shall be made as the first act of business at the meeting.

(B) Any other adjustment to the agenda may be made at any time during the meeting.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the ~~judicial branch~~ Judicial Branch of the ~~government~~ Government of Vermont or of any part of the same or to the ~~public service board~~ Public Service Board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this ~~state~~ State.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine, day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the ~~parole board~~ Parole Board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility.

Sec. 3. 1 V.S.A. § 313 is amended to read:

§ 313. EXECUTIVE SESSIONS

(a) No public body ~~described in section 312 of this title~~ may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of State government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go

into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision ~~(2)~~ (b)(1) of this ~~subsection~~ section. Minutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title.

(b) A public body may not hold an executive session except to consider one or more of the following:

~~(1)~~ (1) ~~Contracts, labor relations agreements with employees, arbitration, mediation, grievances, civil actions, or prosecutions by the state, where premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage;~~

~~(2)~~(1) The negotiating or securing of real estate purchase or lease options;

~~(3)~~(2) The appointment or employment or evaluation of a public officer or employee, including discussion, interview, and evaluation of the merits of a candidate for public office or employment, provided that a final decision to hire or appoint a public officer or employee shall be made in an open meeting;

~~(4)~~(3) A disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

~~(5)~~(4) A clear and imminent peril to the public safety;

~~(6)~~(5) Discussion or consideration of records or documents excepted Records exempt from the access to public records provisions of section 317 316 of this title. Discussion or consideration of the excepted record or document; provided, however, that discussion of the exempt record shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

~~(7)~~(6) The academic records or suspension or discipline of students;

~~(8)~~(7) Testimony from a person in a parole proceeding conducted by the Parole Board if public disclosure of the identity of the person could result in physical or other harm to the person;

~~(9)~~(8) Information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);

(9) Municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety;

(10) After making a specific finding that premature general public knowledge would place the public body or a person involved at a substantial disadvantage:

(A) Contracts;

(B) Labor relations agreements with employees;

(C) Arbitration or mediation;

(D) Grievances, other than tax grievances; or

(E) Professional legal advice in connection with pending or imminent civil litigation or a prosecution, to which the public body is or may be a party.

~~(b)~~(c) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

~~(e)~~(d) The Senate and House of Representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, § 8 of the Constitution.

Sec. 4. 1 V.S.A. § 314 is amended to read:

§ 314. PENALTY AND ENFORCEMENT

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter, a person who knowingly and intentionally violates the provisions of this subchapter on behalf or at the behest of a public body, or a person who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting for which provision is herein made, shall be guilty of a misdemeanor and shall be fined not more than \$500.00.

~~(b)~~(1) ~~The attorney general~~ Prior to instituting an action under subsection (c) of this section, the Attorney General or any person aggrieved by a violation

of the provisions of this subchapter shall provide the public body written notice that alleges a specific violation of this subchapter and requests a specific cure of such violation. The public body will not be liable for attorney's fees and litigation costs under subsection (d) of this section if it cures in fact a violation of this subchapter in accordance with the requirements of this subsection.

(2) Upon receipt of the written notice of alleged violation, the public body shall respond publicly to the alleged violation within seven business days by:

(A) acknowledging the violation of this subchapter and stating an intent to cure the violation within 14 calendar days; or

(B) stating that the public body has determined that no violation has occurred and that no cure is necessary.

(3) Failure of a public body to respond to a written notice of alleged violation within seven business days shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.

(4) Within 14 calendar days after a public body acknowledges a violation under subdivision (2)(A) of this subsection, the public body shall cure the violation at an open meeting by:

(A) either ratifying, or declaring as void, any action taken at or resulting from a meeting in violation of this subchapter; and

(B) adopting specific measures that actually prevent future violations.

(c) Following expiration of the seven-business-day response period of subdivision (b)(2) of this section and, if applicable, of the additional 14-calendar-day cure period for public bodies acknowledging a violation, the Attorney General or any person aggrieved by a violation of the provisions of this subchapter may ~~apply to the superior court~~ bring an action in the Civil Division of the Superior Court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. An action may be brought under this section no later than one year after the meeting at which the alleged violation occurred or to which the alleged violation relates. Except as to cases the ~~court~~ Court considers of greater importance, proceedings before the ~~superior court~~ Civil Division of the Superior Court, as authorized by this section and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(d) The Court shall assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation

costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed, unless the Court finds that:

(1)(A) the public body had a reasonable basis in fact and law for its position; and

(B) the public body acted in good faith. In determining whether a public body acted in good faith, the Court shall consider, among other factors, whether the public body responded to a notice of an alleged violation of this subchapter in a timely manner under subsection (b) of this section; or

(2) the public body cured the violation in accordance with subsection (b) of this section.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

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

Bill Amended; Third Reading Ordered

H. 602

Rep. Devereux of Mount Holly, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to municipal budget committees

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

Sec. 1. 17 V.S.A. § 2646 is amended to read:

§ 2646. TOWN OFFICERS; QUALIFICATION; ELECTION

At the annual meeting, a town shall choose from among its legally qualified voters the following town officers, who shall serve until the next annual meeting and until successors are chosen, unless otherwise provided by law:

* * *

(8) A collector of current taxes, if the town so ~~orders~~ votes;

(9) A collector of delinquent taxes, if the town so ~~orders~~ votes, for a term of one year unless a town votes that a collector of delinquent taxes shall be elected for a term of three years. When a town votes for a three-year term for the collector of delinquent taxes, that three-year term shall remain in effect

until the town rescinds it by the majority vote of the legal voters present and voting at an annual meeting, duly warned for that purpose;

* * *

(12) A trustee of public funds if the town ~~has so ordered~~ votes;

* * *

(14) A cemetery commissioner if the town ~~has so ordered~~ votes;

(15) One or more patrol officers to patrol town highways under the direction of the selectboard, if the town so ~~orders~~ votes;

(16) One or two road commissioners who shall be elected by ballot if the town ~~has so ordered~~ votes; otherwise they shall be appointed by the selectboard as provided in section 2651 of this chapter. The road commissioners shall be elected for a term of one year unless a town votes that the commissioners shall be elected for a term of two or three years. When a town votes for a two-year or three-year term for the office of road commissioner, that two-year or three-year term shall remain in effect until the town rescinds it by the majority vote of the legal voters present and voting at an annual meeting, duly warned for that purpose;

(17) Three water commissioners unless the town votes to elect additional selectboard members, in which case the number of water commissioners shall, at the discretion of the selectboard, be the same as the number of members that comprise the selectboard. The commissioners shall be elected by ballot if the town ~~has so ordered~~ votes; otherwise they shall be appointed by the selectboard as provided in section 2651 of this chapter;

(18) Five members of an advisory budget committee, if the town so votes, unless the town votes to elect additional advisory budget committee members. The advisory budget committee members shall be elected by ballot, unless the town votes to have those members appointed by the selectboard.

Sec. 2. 24 V.S.A. chapter 33, subchapter 14 is added to read:

Subchapter 14. Budget Committee

§ 1147. ADVISORY BUDGET COMMITTEE CREATION; DUTIES

If a municipality creates an advisory budget committee as provided in 17 V.S.A. § 2646, the committee shall evaluate the municipality's budget and make recommendations to the selectboard for the budget based on its findings.

Sec. 3. EFFECT OF ACT; PREVIOUS TOWN ORDERS

A town that has ordered the election of officers under the provisions of 17 V.S.A. § 2646 prior to the effective date of Sec. 1 of this act may continue to elect those officers after the effective date of Sec. 1 of this act.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

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

Action on Bill Postponed

H. 685

House bill, entitled

An act relating to identification and registration of moorings

Was taken up and pending the reading of the report of the committee on Fish, Wildlife & Water Resources, on motion of **Rep. McCullough of Williston**, action on the bill was postponed until March 11, 2014.

Favorable Report; Third Reading Ordered

H. 718

Rep. Lewis of Berlin, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to approval of amendments to the charter of the Village of Derby Line

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Favorable Report; Third Reading Ordered

H. 864

Rep. Emmons of Springfield spoke for the committee on Corrections and Institutions.

Rep. Winters of Williamstown, for the committee on Appropriations, to which had been referred House bill, entitled

An act relating to capital construction and State bonding budget adjustment

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Rules Suspended and Bill Committed to Committee

H. 866

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Marek of Newfane**, the rules were suspended and House bill, entitled

An act relating to qualifications of judicial officers and judicial selection and retention

Was taken up for immediate consideration.

Pending second reading of the bill, **Rep. Marek of Newfane** moved that the bill be committed to the committee on Judiciary, which was agreed to.

Message from the Senate No. 25

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. 275. An act relating to the Court's jurisdiction over youthful offenders.

S. 304. An act relating to public school principals and nonrenewal of contracts.

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

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 46. Joint resolution providing for a Joint Assembly to vote on the retention of six Superior Judges.

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

Adjournment

At four o'clock in the afternoon, on motion of **Rep. Savage of Swanton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.