

Journal of the Senate

FRIDAY, FEBRUARY 22, 2013

Pursuant to Rule 8 of the Senate Rules, 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

Devotional exercises were conducted by the Reverend Carl Durham of Berlin.

Message from the House No. 21

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. 265. An act relating to the education property tax rates and base education amount for fiscal year 2014.

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

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

H.C.R. 34. House concurrent resolution congratulating the 2012 Black River High School Presidents' Division IV girls' championship soccer team.

H.C.R. 35. House concurrent resolution commending watershed organizations for their role in river and lake cleanup activities in Vermont.

H.C.R. 36. House concurrent resolution congratulating the Vermont Historical Society on its 175th anniversary.

H.C.R. 37. House concurrent resolution honoring Arthur A. Ristau of Barre.

H.C.R. 38. House concurrent resolution congratulating the Vermont Housing and Conservation Board on its 25th anniversary.

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

Bill Referred to Committee on Appropriations**S. 26.**

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 providing state financial support for school meals for children of low-income households.

Bills Introduced

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

S. 127.

By Senators Ashe, Baruth, Pollina and Zuckerman,

An act relating to public inspection and copying of records of animal care.

To the Committee on Government Operations.

S. 128.

By Senator Ayer,

An act relating to updating mental health judicial proceedings.

To the Committee on Health and Welfare.

S. 129.

By Senators Sears, Baruth, Doyle, Galbraith, MacDonald and White,

An act relating to workers' compensation liens.

To the Committee on Finance.

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. 130.

By the Committee on Education,

An act relating to encouraging flexible pathways to secondary school completion.

Bill Referred

House bill of the following title was read the first time and referred:

H. 265.

An act relating to the education property tax rates and base education amount for fiscal year 2014.

To the Committee on Finance.

Third Reading Ordered**S. 99.**

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

An act relating to the standard measure of recidivism.

Reported that the bill ought to pass.

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

Bills Amended; Third Readings Ordered**S. 19.**

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

An act relating to prohibiting intentionally accessing child pornography through the Internet.

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

Sec. 1. 13 V.S.A. § 2827 is amended to read:

§ 2827. POSSESSION OF CHILD PORNOGRAPHY

(a) No person shall, with knowledge of the character and content, knowingly possess with intent to view or access with intent to view any photograph, film, or visual depiction, including any depiction which is stored electronically, of sexual conduct by a child or of a clearly lewd exhibition of a child's genitals or anus.

* * *

(c) In any prosecution arising under this section, the defendant may raise any of the following affirmative defenses, which shall be proven by a preponderance of the evidence:

(1) ~~that~~ That the defendant in good faith had a reasonable basis to conclude that the child in fact had attained the age of 16 when the depiction was made;

(2) ~~that~~ That the defendant possessed or accessed depictions of child pornography and promptly and in good faith;

(A) took reasonable steps, whether successful or not, to destroy or eliminate the ~~depiction~~ depictions; or

(B) reported the matter to a law enforcement agency and afforded the agency access to the depictions.

Sec. 2. 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, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

S. 31.

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

An act relating to prohibiting a court from consideration of interests in revocable trusts or wills when making a property settlement in a divorce proceeding.

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

Sec. 1. 15 V.S.A. § 751 is amended to read:

§ 751. PROPERTY SETTLEMENT

* * *

(c)(1) Notwithstanding any provision of subsection (b) of this section to the contrary, in making a property settlement the court shall not consider the parties' interests in revocable estate planning instruments, including interests that pass at death by operation of law or by contract, unless the interest is vested and not capable of modification or divestment.

(2) This subsection shall not apply to estate planning instruments created by the parties of the divorce proceeding.

(3) A person shall not cause marital property to be placed in an estate planning instrument for the purpose of excluding it from a property settlement.

A court may order a party to produce evidence related to an estate planning instrument if it appears that marital property may be included in the instrument.

(4) A person who is not party to the divorce may be subjected to discovery or compelled to testify on the subject of his or her own last will and testament, on any revocable trust of which he or she is settlor or, in conjunction with any of these instruments, on his or her assets if the court finds that a party has acted in bad faith regarding his or her opportunity to acquire capital assets and income in the future.

(5) The court may impose all applicable sanctions, including an award of attorney's fees, upon finding that a party acted in bad faith pursuant to this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

And that when so amended the bill ought to pass.

Senator Baruth Assumes the Chair

Senator Campbell Resumes the Chair

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.

House Proposal of Amendment to Senate Proposal of Amendment Concurred In

H. 47.

House proposals of amendment to Senate proposal of amendment to House bill entitled:

An act relating to fiscal year 2013 budget adjustment.

Was taken up.

The House proposes to the Senate to amend the Senate proposal of amendment as follows:

First: By striking out Sec. 11 (state police; budget) in its entirety and inserting in lieu thereof the following:

Sec. 11. Sec. B.209 of No. 162 of the Acts of the 2011 Adj. Sess. (2012) is amended to read:

Sec. B.209 Public safety - state police

Personal services	44,109,260	44,109,260
Operating expenses		7,777,093
Grants	<u>6,860,000</u>	<u>6,860,000</u>
Total	<u>58,012,353</u>	58,746,353
Source of funds		
General fund	<u>20,087,245</u>	20,821,245
Transportation fund	25,238,498	25,238,498
Special funds	2,585,518	2,585,518
Federal funds	9,011,627	9,011,627
Interdepartmental transfers	<u>1,089,465</u>	<u>1,089,465</u>
Total	<u>58,012,353</u>	58,746,353

Second: By striking out Sec. 15 (protection function total) in its entirety and inserting in lieu thereof the following:

Sec. 15. Sec. B.240 of No. 162 of the Acts of the 2011 Adj. Sess. (2012) is amended to read:

Sec. B.240 Total protection to persons and property

~~279,853,984~~ 282,833,185

Source of funds		
General fund	106,194,812	109,237,894
Transportation fund	25,238,498	25,238,498
Special funds	67,957,274	67,957,274
Tobacco fund	790,816	790,816
Federal funds	58,191,789	58,191,789
ARRA funds	5,160,681	5,160,681
Global commitment fund	1,138,944	1,138,944
Interdepartmental transfers	8,765,826	8,701,945
Enterprise funds	<u>6,415,344</u>	<u>6,415,344</u>
Total	279,853,984	282,833,185

Third: In Sec. 89 (developmental services) by striking out subsection (b) of Sec. E.333 of No. 162 of the Acts of the 2011 Adj. Sess. (2012) in its entirety and inserting in lieu thereof the following:

(b) Any modifications to the State System of Care Plan made pursuant to this section shall be consistent with 18 V.S.A. chapter 204A and shall remain in effect until an annual revision or a new three-year plan is adopted pursuant to 18 V.S.A. § 8725, whichever occurs first.

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

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 Devereux,

By Senators Nitka, Campbell and McCormack,

H.C.R. 34.

House concurrent resolution congratulating the 2012 Black River High School Presidents' Division IV girls' championship soccer team.

By Representatives Townsend and Deen,

H.C.R. 35.

House concurrent resolution commending watershed organizations for their role in river and lake cleanup activities in Vermont.

By Representative Jerman and others,

By Senators Cummings, Doyle and Pollina,

H.C.R. 36.

House concurrent resolution congratulating the Vermont Historical Society on its 175th anniversary.

By Representatives Poirier and Taylor,

H.C.R. 37.

House concurrent resolution honoring Arthur A. Ristau of Barre.

By Representative Head and others,

H.C.R. 38.

House concurrent resolution congratulating the Vermont Housing and Conservation Board on its 25th anniversary.

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, February 26, 2013, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 16.