

Journal of the Senate

FRIDAY, MARCH 22, 2013

Pursuant to the Senate Rules, in the absence of the President, 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. 31

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. 2. An act relating to the Governor's Snowmobile Council.

H. 99. An act relating to equal pay.

H. 107. An act relating to health insurance, Medicaid, and the Vermont Health Benefit Exchange.

H. 136. An act relating to cost-sharing for preventive services.

H. 299. An act relating to enhancing consumer protection provisions for propane refunds, unsolicited demands for payment, and failure to comply with civil investigations.

H. 431. An act relating to mediation in foreclosure actions.

H. 511. An act relating to "zappers" and automated sales suppression devices.

H. 515. An act relating to miscellaneous agricultural subjects.

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

Rules Suspended; Bill Committed

On motion of Senator Kitchel, the Committee on Appropriations was relieved of further consideration of Senate bill entitled:

An act relating to amending perpetual conservation easements

Thereupon, pending entry on the Calendar for notice, Senator Kitchel moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

Bill Referred to Committee on Appropriations

S. 55.

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 increasing efficiency in state government finance and lending operations.

Joint Resolution Referred

J.R.S. 19.

Joint Senate resolution entitled:

Joint resolution providing for a Joint Assembly to vote on the retention of seven Superior Judges and one Magistrate.

Having been placed on the Calendar for action, was taken up and pending the question, Shall the joint Senate resolution be adopted on the part of the Senate?, on motion of Senator Baruth, the joint resolution was referred to the Committee on Judiciary.

H. 2.

An act relating to the Governor's Snowmobile Council.

To the Committee on Transportation.

H. 99.

An act relating to equal pay.

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

H. 107.

An act relating to health insurance, Medicaid, and the Vermont Health Benefit Exchange.

To the Committee on Health and Welfare.

H. 136.

An act relating to cost-sharing for preventive services.

To the Committee on Health and Welfare.

H. 299.

An act relating to enhancing consumer protection provisions for propane refunds, unsolicited demands for payment, and failure to comply with civil investigations.

To the Committee on Judiciary.

H. 431.

An act relating to mediation in foreclosure actions.

To the Committee on Judiciary.

H. 511.

An act relating to “zappers” and automated sales suppression devices.

To the Committee on Judiciary.

H. 515.

An act relating to miscellaneous agricultural subjects.

To the Committee on Agriculture.

Consideration Resumed; Bill Amended; Third Reading Ordered**S. 41.**

Consideration was resumed on Senate bill entitled:

An act relating to water and sewer service.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Government Operations? Senators Pollina, White, Ayer, French, and McAllister moved that the proposal of amendment of the Committee on Government Operations bill be amended in Sec. 1, 24 V.S.A. § 5143, in subsection (c), by striking out the second sentence in its entirety and inserting in lieu thereof a new sentence to read as follows: If any water and sewer charges or fees are included in the tenant’s rent, the tenant may deduct the cost of any water and sewer service charges or fees from his or her rent pursuant to 9 V.S.A. § 4459.

Which was agreed to.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Consideration Resumed; Bill Amended; Third Reading Ordered

S. 58.

Consideration was resumed on Senate bill entitled:

An act relating to Act 250 and oil pipelines.

Thereupon, the pending question, Shall the bill be amended as recommended by the Natural Resources and Energy?, was decided in the affirmative.

Thereupon, pending the question, Shall the bill be read the third time? Senator Sears, Ashe, Benning, Nitka, and White moved that the bill be amended as follows:

First: In Sec. 2, 10 V.S.A. § 6081, in subsection (b), by striking out the last sentence and inserting in lieu thereof:

Subsection (a) of this section also shall apply to an oil or petroleum transmission pipeline and associated facilities excepted under this subsection if there is a cognizable physical change to the pipeline or associated facilities, unless the change is solely for the purpose of repair in the usual course of business.

Second: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read:

Sec. 4. APPLICATION

Notwithstanding 1 V.S.A. §§ 213 and 214, this act shall apply to any cognizable physical change to an oil or petroleum pipeline and associated facilities that is made after the act's effective date regardless of whether a jurisdictional opinion under 10 V.S.A. chapter 151 (Act 250) was issued prior to that date concerning the applicability of that chapter to the change.

Which was agreed to.

Thereupon, the question, Shall the bill be read the third time?, was decided in the affirmative.

Second Reading; Consideration Postponed**S. 129.**

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

An act relating to workers' compensation liens.

Reported recommending that the bill be amended as follows:

First: By striking out Sec. 1 in its entirety

Second: In Sec. 2, 21 V.S.A. § 643a, after the sentence that reads: "The extension shall be specific as to the number of days needed and the reason for the extension and must be received by the Commissioner prior to the end of the 21-day limit." by inserting a new sentence to read as follows: No extension approved by the Commissioner shall exceed 21 days.

And by renumbering the remaining sections to be numerically correct.

And that when so amended the bill ought to pass.

Senator MacDonald, on behalf of the Committee on Finance, moved to substitute an amendment for the recommendation of amendment of the Committee on Finance as follows:

First: In Sec. 1, 21 V.S.A. § 624, in subdivision (e)(2), in the first sentence, after the words "limited liability insurance or other cause" by inserting the following: , except comparative fault

Second: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the ~~commissioner~~ Commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the ~~commissioner~~ Commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for ~~seven~~ 14 days after the notice is received by

~~the commissioner~~ Commissioner and the employee. If the claimant disputes the discontinuance, the claimant may file with the Commissioner an objection to the discontinuance and seek an extension of the 14-day limit. The Commissioner may grant an extension up to 21 days. The request for an extension shall be specific as to the number of days needed and the reason for the extension and must be received by the Commissioner prior to the end of the 14-day limit. A copy of the request for an extension shall be provided to the employer at the time the request is made to the Commissioner. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the ~~commissioner~~ Commissioner determines that the discontinuance is warranted or if otherwise ordered by the ~~commissioner~~ Commissioner. Every notice shall be reviewed by the ~~commissioner~~ Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the ~~commissioner~~ Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the ~~commissioner~~ Commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the ~~department~~ Department that establishes that a preponderance of all evidence now supports the claim. If the ~~commissioner's~~ Commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the ~~commissioner~~ Commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

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 the substitution of amendment was agreed to.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Finance, as substituted? Senator Mullin requested the question be divided

Thereupon pending the question, Shall the bill be amended as recommended by the Committee on Finance, as substitution in the *First Instance*? consideration of the bill was postponed until the next legislative day.

Bill Amended; Action Postponed**S. 81.**

Senate bill entitled:

An act relating to the regulation of octaBDE, pentaBDE, decaBDE, and flame retardant known as Tris in consumer products.

Was taken up.

Thereupon, pending third reading of the bill, Senator Lyons moved to amend the bill as follows:

First: In Sec. 1, 9 V.S.A. § 2974, by striking out “50 parts per million” where it appears in subsections (a) and (b) and inserting in lieu thereof 1,000 parts per million

Second: In Sec. 1, 9 V.S.A. § 2975, by striking out the year “2010” where it appears in subsection (c) and inserting in lieu thereof the year 2013

Third: In Sec. 1, by striking out 9 V.S.A. § 2977 in its entirety and inserting in lieu thereof the following:

§ 2977. EXEMPTIONS

(a) The requirements and prohibitions of this chapter shall not apply to:

- (1) the sale or resale of used products;
- (2) motor vehicles or parts for use on motor vehicles; and
- (3) building insulation materials.

(b) The requirements and prohibitions of this chapter regarding the use of of tris(2-chloro-1-methylethyl) phosphate (TCPP), chemical abstracts service number 13674-84-5, shall not apply to:

(1) personal computers, audio and video equipment, calculators, wireless phones, game consoles, handheld devices incorporating a screen that are used to access interactive software and their associated peripherals, and cables and other similar connecting devices; or

(2) interactive software intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks.

Senator Galbraith demanded pursuant to Rule 67 the *First Instance* of the proposal of amendment be divided.

Thereupon the pending question shall the bill be amended as proposed by Senator Lyons in the *First Instance* was disagreed to on a roll call, Yeas 13, Nays 15.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Baruth, Collins, Flory, Fox, Lyons, McAllister, McCormack, Mullin, Nitka, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Ashe, Ayer, Benning, Bray, Cummings, Doyle, French, Galbraith, Hartwell, Kitchel, MacDonald, Mazza, Pollina, Rodgers, Zuckerman.

Those Senators absent or not voting were: Campbell (presiding), Westman.

Thereupon, pending the question, Shall the bill be amended as moved by Senator Lyons in the *Second* and *Third Instance*, Senator Mazza moved that the rules be suspended and that the the action taken on the proposal of amendment of Senator Lyons in the *First Instance* be reconsidered, which was agreed to on a roll call, Yeas 27, Nays 1.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Benning, Bray, Collins, Cummings, Doyle, Flory, Fox, French, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McAllister, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Snelling, Starr, White, Zuckerman.

The Senator who voted in the negative was: Galbraith.

Those Senators absent or not voting were: Campbell (presiding), Westman.

Thereupon the pending question Shall the bill be amended as proposed by Senator Lyons in the *First Instance* was agreed to on a roll call, Yeas 22, Nays 6.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Baruth, Benning, Bray, Collins, Flory, Fox, French, Hartwell, Kitchel, Lyons, Mazza, McAllister, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Ashe, Cummings, Doyle, Galbraith, MacDonald, Zuckerman.

Those Senators absent or not voting were: Campbell (presiding), Westman.

Thereupon, pending the question, Shall the bill be amended as moved by Senator Lyons in the *Second and Third Instances*, Senator Sears moved the bill be committed to the Committee on Natural Resources and Energy which was disagreed to on a roll call, Yeas 7, Nays 21.

Senator Ayer having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Benning, Flory, Galbraith, Hartwell, McAllister, Sears, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Bray, Collins, Cummings, Doyle, Fox, French, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Rodgers, Snelling, White, Zuckerman.

Those Senators absent or not voting were: Campbell (presiding), Westman.

Thereupon, the pending question, Shall the bill be amended as moved by Senator Lyons in the *Second and Third Instances?* was agreed to.

Thereupon, pending third reading of the bill, Senator Hartwell moved to amend the bill as follows:

First: In Sec. 1, 9 V.S.A. § 2972, subsection (a)(13), after the expression “(as of the effective date of this section)” by striking out the “;” where it firstly appears and inserting in lieu thereof the word and

Second: In Sec. 1, 9 V.S.A. § 2972, subsection (a)(13), by striking out “; or tris(2-chloro-1-methylethyl) phosphate (TCPP) chemical abstracts service number 13674-84-5, (as of the effective date of this section)”

Thereupon, pending the questions, Shall the bill be amended as moved by

Senator Hartwell?, Senator Benning moved that the bill be committed to the Committee on Natural Resources and Energy?

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, March 26, 2013, at nine o'clock in the forenoon pursuant to J.R.S. 20.

Message from the House No. 32

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. 105. An act relating to adult protective services reporting requirements.

H. 178. An act relating to anatomical gifts.

H. 377. An act relating to neighborhood planning and development for municipalities with designated centers.

H. 405. An act relating to manure management and anaerobic digesters.

H. 406. An act relating to listers and assessors.

H. 510. An act relating to the State's transportation program and miscellaneous changes to the State's transportation laws.

H. 518. An act relating to miscellaneous amendments to Vermont retirement laws.

H. 523. An act relating to jury questionnaires, the filing of foreign child custody determinations, court fees, and judicial record keeping.

H. 524. An act relating to making technical amendments to education laws.

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. 61. House concurrent resolution honoring the outstanding efforts of those who care for, educate, and advocate for our young children in Vermont.

H.C.R. 62. House concurrent resolution designating March 11–17 as Multiple Sclerosis Week in Vermont.

H.C.R. 63. House concurrent resolution commemorating Vermont

Railway's gift of a 1913 rail car to the City of Rutland.

H.C.R. 64. House concurrent resolution congratulating the winners of the sixth Annual Junior Iron Chef VT statewide youth culinary competition.

H.C.R. 65. House concurrent resolution in memory of Tom Fagan and his role in the establishment of the Rutland Halloween Parade.

H.C.R. 66. House concurrent resolution congratulating the American Veterinary Medical Association on its 150th anniversary.

H.C.R. 67. House concurrent resolution honoring the federal TRIO programs in Vermont.

H.C.R. 68. House concurrent resolution recognizing the creative recreational proposal of Playgrounds for P.E.A.S.E..

H.C.R. 69. House concurrent resolution honoring the Playhouse Cooperative's creative effort to save and operate Randolph's Playhouse Movie Theatre.

H.C.R. 70. House concurrent resolution honoring Cheryl White and the *Valley Voice* newspaper for outstanding community service.

H.C.R. 71. House concurrent resolution in memory of former Representative Daniel H. Deuel of West Rutland.

H.C.R. 72. House concurrent resolution congratulating the 2013 Harwood Union High School Highlanders Division II girls' ice hockey championship team.

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

The House has considered concurrent resolutions originating in the Senate of the following titles:

S.C.R. 17. Senate concurrent resolution congratulating the Beth Jacob Synagogue in Montpelier on its centennial anniversary.

S.C.R. 18. Senate concurrent resolution in memory of former Shrewsbury Selectboard Chair Donald Parrish.

And has adopted the same in concurrence.

Senate 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 on the part of the Senate:

By Senators Doyle, Cummings and Pollina,

S.C.R. 17.

Senate concurrent resolution congratulating the Beth Jacob Synagogue in Montpelier on its centennial anniversary.

By Senators French, Flory and Mullin,

By Representative Burditt and others,

S.C.R. 18.

Senate concurrent resolution in memory of former Shrewsbury Selectboard Chair Donald Parrish.

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 Miller,

H.C.R. 61.

House concurrent resolution honoring the outstanding efforts of those who care for, educate, and advocate for our young children in Vermont.

By Representatives Krebs and Johnson,

H.C.R. 62.

House concurrent resolution designating March 11–17 as Multiple Sclerosis Week in Vermont.

By Representative Russell,

H.C.R. 63.

House concurrent resolution commemorating Vermont Railway's gift of a 1913 rail car to the City of Rutland.

By Representative Stevens and others,

H.C.R. 64.

House concurrent resolution congratulating the winners of the sixth Annual Junior Iron Chef VT statewide youth culinary competition.

By Representative Russell,

H.C.R. 65.

House concurrent resolution in memory of Tom Fagan and his role in the establishment of the Rutland Halloween Parade.

By All Members of the House,

By Senators Ayer, Doyle, Fox, McAllister, Pollina and Zuckerman,

H.C.R. 66.

House concurrent resolution congratulating the American Veterinary Medical Association on its 150th anniversary.

By Representative Jerman and others,

By Senators Baruth, Benning, Cummings, Doyle, Fox, McCormack and White,

H.C.R. 67.

House concurrent resolution honoring the federal TRIO programs in Vermont.

By Representative Ram and others,

H.C.R. 68.

House concurrent resolution recognizing the creative recreational proposal of Playgrounds for P.E.A.S.E..

By Representative Townsend and others,

By Senator MacDonald,

H.C.R. 69.

House concurrent resolution honoring the Playhouse Cooperative's creative effort to save and operate Randolph's Playhouse Movie Theatre.

By Representative Smith and others,

By Senators Ayer and Bray,

H.C.R. 70.

House concurrent resolution honoring Cheryl White and the *Valley Voice* newspaper for outstanding community service.

By Representative Potter and others,

H.C.R. 71.

House concurrent resolution in memory of former Representative Daniel H. Deuel of West Rutland.

By Representative Stevens and others,

H.C.R. 72.

House concurrent resolution congratulating the 2013 Harwood Union High School Highlanders Division II girls' ice hockey championship team.