

Journal of the Senate

TUESDAY, APRIL 29, 2014

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 Rabbi James Glazier of Burlington.

Message from the House No. 57

A message was received from the House of Representatives by Ms. Melissa Kucserik, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

S. 177. An act relating to nonjudicial discipline.

And has passed the same in concurrence.

The House has adopted joint resolution of the following title:

J.R.H. 18. Joint resolution urging Congress to reauthorize the federal terrorism insurance program.

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

The House has considered Senate proposal of amendment to House bill of the following title:

H. 123. An act relating to Lyme disease and other tick-borne illnesses.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

The House has considered a bill originating in the Senate of the following title:

S. 70. An act relating to the delivery of raw milk at farmers' markets.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

The House has considered Senate proposal of amendment to House bill entitled:

H. 765. An act relating to eliminating the part-time certification of law enforcement officers.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Hubert of Milton
Rep. Sweaney of Windsor
Rep. Higley of Lowell.

The Governor has informed the House that on the April 24, 2014, he approved and signed bills originating in the House of the following titles:

H. 609. An act relating to terminating propane service.

H. 799. An act relating to the importation of firewood.

The Governor has informed the House that on the April 25, 2014, he approved and signed a bill originating in the House of the following title:

H. 631. An act relating to lottery commissions.

Bill Referred to Committee on Appropriations

House 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:

H. 555.

An act relating to the commitment of a criminal defendant who is incompetent to stand trial because of a traumatic brain injury.

Joint Resolution Referred

J.R.S. 58.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Campbell, McCormack, Nitka, Benning, Cummings, Kitchel, MacDonald, Rodgers, Starr, Westman, and White,

J.R.S. 58. Joint resolution relating to encouraging New Hampshire to enact laws protecting emergency responders from across state lines.

Whereas, prehospital care is reliant on the thorough cooperation of medical care providers from many jurisdictions and from volunteers who make up a large portion of the staffing of emergency medical service units, and

Whereas, mutual aid agreements exist between Vermont and New Hampshire Fire Departments and rescue squads to promote that cooperation across state borders for that prehospital medical care as well as fire protection and response to all emergencies, and

Whereas, on August 22, 2006, the Springfield Vermont Fire Department responded to a 911 call for help for a woman who had fallen from a dock on the Connecticut River; the woman, having suffered minor injuries, was not able to walk, pull herself up onto the dock, or climb the riverbank, and therefore required assistance, and

Whereas, the Springfield Vermont Fire Department responded and subsequently requested and received mutual aid assistance from the Town of Charlestown and the Cornish Rescue Squad, both New Hampshire entities; and the Cornish Rescue Squad responded with its airboat to transport the patient to a landing for transfer to an ambulance, and

Whereas, the patient was transferred to a Stokes basket rescue litter, immobilized for carrying, and secured to the airboat for transport to the boat landing in Springfield, Vermont, and, as the Cornish Rescue Squad attempted to transport the patient to the landing, the airboat sank in a portion of the river within the jurisdiction of Charlestown, New Hampshire, and the patient drowned, and

Whereas, the decedent's estate filed suit in New Hampshire Superior Court against various parties including the Town of Springfield and a number of New Hampshire entities, and

Whereas, because Springfield is outside the State of New Hampshire and the rescue boat sank within the jurisdiction of New Hampshire, the New Hampshire Superior Court denied to the Town of Springfield both the immunity protections provided by Vermont law and those liability protections provided to New Hampshire towns by New Hampshire law, thereby causing Springfield to be exposed to unlimited liability while the New Hampshire entities received the full protections provided under New Hampshire law, and

Whereas, the New Hampshire Supreme Court denied Springfield, Vermont's motion for reconsideration or to hear an interlocutory appeal of the case, and

Whereas, the Town of Springfield, Vermont, and its coverage provider, the VLCT Property and Casualty Intermunicipal Fund self-insured risk pool, had

to pay approximately \$700,000.00 as a result of a settlement necessitated by the lack of legal protections, and

Whereas, failure to address the Vermont emergency responders' exposure to liability that resulted from these New Hampshire court decisions detrimentally affects the willingness of Vermont municipalities in border areas to cooperate with New Hampshire authorities in providing emergency services in the future, and

Whereas, there is a possible remedy to this injustice in statute if the New Hampshire Legislature were to review and amend several statutes, including: RSA 153-A:2, RSA 153-A:19, RSA 154:1-d, RSA 508:12, RSA 508:12-b, and RSA 508:17, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly respectfully requests the New Hampshire Legislature to amend New Hampshire statutes necessary to offer the same protections to Vermont emergency service entities responding in New Hampshire as those offered to New Hampshire entities, *and be it further*

Resolved: That the General Assembly affirms its support for cooperation between Vermont and New Hampshire emergency response entities and for protection from liability that is afforded equitably to both Vermont and New Hampshire entities, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the New Hampshire Speaker of the House, Terie Norelli, and the President of the Senate, Chuck Morse, and to the Governor of New Hampshire, Maggie Hassan.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Judiciary.

Joint Resolution Referred

J.R.H. 18.

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

Joint resolution urging Congress to reauthorize the federal terrorism insurance program.

Whereas, the terrorist attacks of September 11, 2001 resulted in insured losses of staggering amounts, and

Whereas, the enormity of the attack caused difficulties for individuals and businesses to secure insurance coverage against a future terrorist attack, and

Whereas, Congress passed the Terrorism Risk Insurance Act of 2002, Pub.L. 107-297, the Terrorism Risk Insurance Extension Act of 2005, Pub.L. 109-144, and the Terrorism Risk Insurance Program Reauthorization Act of 2007, Pub.L. 110-160 (TRIPRA) to address this critical problem, and

Whereas, TRIPRA provides that terrorism insurance coverage is available to an individual insurer after the insurer has incurred a minimum of \$100 million worth of losses resulting from a certified act of terrorism, and

Whereas, once the \$100 million trigger has been reached, the federal government pays “85 percent, of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid,” and

Whereas, TRIPRA imposes a cap of \$100 billion per year of federal terrorism insurance payments, and

Whereas, this public-private partnership has provided stability and predictability for terrorism insurance coverage in the United States, and

Whereas, without TRIPRA, terrorism insurance, which remains essential, would be unavailable or unaffordable, resulting in major economic consequences, and the continuation of this federal program is important, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to reauthorize the federal terrorism insurance program, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Finance.

**Consideration Resumed; House Proposal of Amendment Concurred in
With Further Proposal of Amendment**

S. 299.

Consideration was resumed on House bill entitled:

An act relating to sampler flights.

Thereupon, pending the question, Shall the motion of Senator Mullin to concur in the House proposal of amendment with further proposal of amendment, be amended as moved by Senator Galbraith?, Senator Galbraith requested and was granted leave to withdraw the proposal of amendment. Thereupon, Senator Mullin requested and was granted leave to withdraw his proposal of amendment.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senators Mullin, Campbell, Lyons, Mazza, and Sears moved that the Senate concur in the House proposal of amendment with further amendment thereto by striking out Sec. 6 in its entirety and inserting in lieu thereof three sections to be Secs. 6, 7, and 8 to read as follows:

Sec. 6. DEPARTMENT OF LIQUOR CONTROL REPORT

On or before January 15, 2015, the Commissioner of Liquor Control, in consultation with the Department of Health, shall submit a report to the Senate Committee on Economic Development, Housing and General Affairs, the House Committee on General, Housing and Military Affairs, the Senate Committee on Judiciary, and the House Committee on Judiciary regarding the risks associated with powdered alcohol products.

Sec. 7. 7 V.S.A. § 69 is added to read:

§ 69. POWDERED ALCOHOL PRODUCTS

(a) A person knowingly and unlawfully possessing a powdered alcohol product shall be fined not more than \$500.00.

(b) A person knowingly and unlawfully selling a powdered alcohol product shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.

(c) As used in this section, “powdered alcohol product” means any alcoholic powder that can be added to water or food.

Sec. 8. EFFECTIVE DATES

(a) This Sec. and Secs. 3–7 shall take effect on passage.

(b) Secs. 1 and 2 shall take effect on July 1, 2014.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with a proposal of amendment, as proposed by Senators Mullin, Campbell, Lyons, Mazza, and Sears?, Senator Galbraith moved to substitute a proposal of amendment for the proposal of amendment of Senators Mullin, Campbell, Lyons, Mazza, and Sears by striking out Sec. 6 in its entirety and inserting in lieu thereof three sections to be Secs. 6, 7 and 8 to read:

Sec. 6. DEPARTMENT OF LIQUOR CONTROL REPORT

On or before January 15, 2015, the Commissioner of Liquor Control, in consultation with the Department of Health, shall submit a report to the Senate Committee on Economic Development, Housing and General Affairs, the House Committee on General, Housing and Military Affairs, the Senate

Committee on Judiciary, and the House Committee on Judiciary regarding the risks associated with powdered alcohol products.

Sec. 7. 7 V.S.A. § 69 is added to read:

§ 69. POWDERED ALCOHOL PRODUCTS

(a) A person knowingly and unlawfully selling a powdered alcohol product shall be fined not more than \$10,000.00.

(b) As used in this section, “powdered alcohol product” means any alcoholic powder that can be added to water or food.

Sec. 8. EFFECTIVE DATES

(a) This Sec. and Secs. 3–7 shall take effect on passage.

(b) Secs. 1 and 2 shall take effect on July 1, 2014.

Which was disagreed to.

Thereupon, the pending question, Shall the House proposal of amendment be concurred in with further proposal of amendment?, was agreed to.

Third Reading Ordered

H. 888.

Senator McAllister, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approval of amendments to the charter of the Town of Milton.

Reported that the bill ought to pass in concurrence.

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

Bill Passed in Concurrence

House bill of the following title was read the third time and passed in concurrence:

H. 881. An act relating to approval of the adoption and the codification of the charter of the Town of Westford.

Proposals of Amendment; Third Reading Ordered

H. 740.

Senator Westman, for the Committee on Transportation, to which was referred House bill entitled:

An act relating to transportation impact fees.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In § 6107 (transportation improvement district fund), by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) The Agency shall provide to the Treasurer an annual accounting of each TID and associated transportation impact fee for that district showing the source, the amount collected, each project that was funded or that will be funded with the fee, and the amount expended.

Second: By striking out § 6108 (payment of fees) in its entirety and inserting in lieu thereof a new § 6108 to read as follows:

§ 6108. PAYMENT OF FEES

(a) An applicant shall pay a transportation impact fee assessed under this subchapter to the Agency, except that a District Commission may direct an applicant to pay a transportation impact fee to a municipality if the impacts of the applicant's development or subdivision are limited to municipal highways and rights-of-way or other municipal transportation facilities.

(b) A municipality receiving a transportation impact fee under this subchapter shall place the fee into a separate account, with balances in the account carried forward from year to year and remaining within the account. Interest earned by the account shall be deposited into the account. The municipality shall provide to the voters an annual accounting of each fee received under this subchapter showing the source, the amount of each fee received, and each project that was funded or will be funded with the fee.

Third: In § 6109 (unspent fee amounts; refunds), by striking out the last sentence.

And that the bill ought to pass in concurrence with such proposals of amendment.

Senator Lyons, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Transportation.

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

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

H. 885.

House bill entitled:

An act relating to making appropriations for the support of government.

Was taken up.

Thereupon, pending third reading of the bill, Senator Kitchel moved to amend the Senate proposal of amendment by as follows:

First: By striking out Sec. E.130 in its entirety.

Second: By inserting a new section to be numbered Sec. E. 306.6 to read as follows:

Sec. E.306.6 HUMAN SERVICE PROGRAMS OVERSIGHT PROPOSAL

(a) As part of the January, 2015, report requirement under 2 V.S.A. § 852 (c) the Health Care Oversight Committee shall, in consultation with the Mental Health Oversight Committee, recommend an oversight structure for human service programs funded by the state when the legislature is not in session. Consideration of the membership, scope, powers, duties, and meetings as well as anticipated coordination with the respective legislative standing committees shall be included with the recommendation.

Third: By inserting a new section to be numbered Sec. E.312.2 to read as follows:

Sec. E.312.2 DEPARTMENT OF HEALTH; AHEC MATCHING GRANT FUNDING

(a) In fiscal year 2014, prior to depositing any new funds into the Higher Education Trust Fund pursuant to 16 V.S.A. § 2885(a)(2), the sum of \$1,000,000 of the funds that would otherwise be deposited into that Fund shall be transferred to the Secretary of Administration and held for use by the Vermont Department of Health as a match for a four-year federal grant for which the Department is applying that would supplement the existing Vermont educational loan repayment program for health care professionals. The funds shall be appropriated in the budget adjustment process as necessary to meet match requirements of the grant.

(b) This transfer is to take advantage of federal funds which will help address a shortage of medical professionals in Vermont by creating loan repayment resources. In the event that the grant cited in subsection (a) is not received, the funds shall be deposited in the Higher Education Trust Fund in accordance with 16 V.S.A. § 2885(a)(2).

Fourth: In Sec. E.339 (regarding correctional services; out of state beds), by adding the words up to immediately preceding each of the following: “\$202,000”, “\$147,200”, and “\$54,800”

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Kitchel?, Senator Ashe moved that the *third* proposal of amendment be voted on separately.

Thereupon, the *first*, *second* and *fourth* proposals of amendment were agreed to.

Thereupon, the *third* proposal of amendment was agreed to.

Senator Galbraith moved that the Senate proposal of amendment be amended in Sec. E.100.5(d)(1) by inserting a new subparagraph to be lettered (A) to read as follows:

(A) that it does not have cash on hand that exceeds by one hundred thousand percent the amount of the proposed investment or state incentive and either one of the following:

And by relettering the remaining subparagraphs to be alphabetically correct.

Which was disagreed to on a roll call, Yeas 8, Nays 19.

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, Galbraith, Hartwell, MacDonald, McCormack, Pollina, Sirotkin, Zuckerman.

Those Senators who voted in the negative were: Ayer, Baruth, Benning, Bray, Collins, Cummings, Doyle, Flory, Kitchel, Lyons, Mazza, McAllister, Mullin, Nitka, Rodgers, Snelling, Starr, Westman, White.

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

Senator Galbraith moved that the Senate proposal of amendment be amended in Sec. E.100.5(d)(1) by inserting a new subparagraph to be lettered (A) to read as follows:

(A) that it does not have cash on hand that exceeds by one hundred thousand percent the amount of the proposed investment or state incentive and either one of the following:

And by relettering the remaining subparagraphs to be alphabetically correct.

Which was disagreed to.

Senator Lyons and Ayer moved to amend the Senate proposal of amendment by inserting Sec. E.324.3 to read as follows:

Sec. E.324.3 33 V.S.A. § 2502(e) is added to read:

(e) ~~Repealed.~~ The Office of Economic Opportunity and the Economic Services Division shall report to the General Assembly, on or before January 15, 2015, with recommendations on how to account for the benefits that result for homes that have been weatherized under the Home Weatherization Assistance Program. The Offices shall jointly consider the existing data related to weatherization, and analyze the heating costs to such homes before and after weatherization. Based on this analysis, the Offices shall include in their report specific recommendations for adjusting the appropriations into, or benefits paid out of, the Low Income Home Energy Assistance Program to account for the benefits provided by the Home Weatherization Assistance Program in fiscal year 2016.

Which was agreed to.

Senator Lyons moved that the Senate proposal of amendment be amended as follows:

First: In Sec. E.306.3, 2 V.S.A. § 692(a), by striking out the words “and planning”

Second: In Sec. E.306.3, 2 V.S.A § 692, by adding a new subsection to be lettered subsection (d) to read as follows:

(d) Annually, on or before January 15, the Committee shall report its recommendations to the committees of jurisdiction.

Third: In Sec. E.306.3, 2 V.S.A. § 693(b)(2)(D), by striking out the words “any other”

Thereupon pending the question, Shall the Senate proposal of amendment be amended as recommended by Senator Lyons?, Senator Lyons, requested and was granted leave to withdraw the proposal of amendment.

Senator Sirotkin moved to amend the Senate proposal of amendment as follows:

First: In Sec. E.326.1 (weatherization program) after the following: “having” by striking out the following: “a” and inserting in lieu thereof the following: an income-sensitive

Second: By adding a new section to be numbered Sec. E.975 to read as follows:

Sec. E.975 2014 Acts and Resolves No. 95, Sec. 75a is amended to read:

Sec. 75a. CHOICES FOR CARE; REINVESTMENT

(a) ~~Of the~~ Provided there are sufficient Choices for Care funds, ~~either actually or projected to be,~~ available for reinvestment in fiscal year 2014, the Department of Disabilities, Aging, and Independent Living ~~is authorized to~~ shall use up to a total of \$1,000,000 in fiscal years 2014 and 2015 on one-time investments that directly benefit eligible choices for care enrollees and one-time investments to home- and community-based providers that are consistent with and prioritized based on current needs analysis to meet the overall strategic goals and outcomes of the waiver. This authorization is in addition to the reinvestment plan submitted by the Department as submitted to the Committees on Appropriations in January 2014. The General Fund portion of this amount is \$435,600 which ~~may~~ shall be transferred to other Department appropriations as needed to meet the objectives of this section. The Department shall report to the Joint Fiscal Committee in July 2014 regarding this provision.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 23, Nays 5.

Senator Baruth 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, Bray, Collins, Cummings, Doyle, French, Galbraith, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Rodgers, Sirotkin, Snelling, Starr, Westman, White.

Those Senators who voted in the negative were: Benning, Flory, McAllister, Pollina, Zuckerman.

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

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

Consideration Resumed; Bill Amended; Bill Passed in Concurrence with Proposal of Amendment; Rules Suspended Bill Messaged

H. 297.

Consideration was resumed on House bill entitled:

An act relating to duties and functions of the Department of Public Service.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as moved by Senator Rodgers?, was disagreed to on a roll call, Yeas 11, Nays 16.

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: Benning, Collins, Doyle, Galbraith, Hartwell, Kitchel, MacDonald, McAllister, Nitka, Rodgers, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Bray, Cummings, Flory, French, Lyons, Mazza, McCormack, Mullin, Pollina, Sirotkin, Snelling, Westman, Zuckerman.

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

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

Thereupon, on motion of Senator Baruth, the rules were suspended, and the bill was ordered messaged to the House forthwith on a division of the Senate, Yeas 20, Nays 5.

Adjournment

On motion of Senator Mazza, the Senate adjourned until nine o'clock and thirty minutes in the morning.