

Journal of the Senate

THURSDAY, APRIL 21, 2016

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 54

A message was received from the House of Representatives by Mr. Jeremy Weiss, 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. 881. An act relating to approval of the adoption and codification of the charter of the Town of Charlotte.

H. 884. An act relating to approval of amendments to the charter of the City of Barre.

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

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 52. Joint resolution relating to weekend adjournment .

And has adopted the same in concurrence.

The Governor has informed the House that on April 19, 2016, he approved and signed bills originating in the House of the following titles:

H. 248. An act relating to miscellaneous revisions to the air pollution statutes.

H. 531. An act relating to aboveground storage tanks.

H. 747. An act relating to the State Treasurer's authority to intercept State funding to a municipality or school district in default from a Municipal Bond Bank borrowing.

Rules Suspended; Bill Committed**H. 876.**

Pending entry on the Calendar for notice, on motion of Senator Mazza, the rules were suspended and House bill entitled:

An act relating to the transportation capital program and miscellaneous changes to transportation-related law.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Transportation, Senator Mazza moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Transportation *intact*,

Which was agreed to.

Bill Referred to Committee on Finance**H. 853.**

House bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to setting the nonresidential property tax rate, the property dollar equivalent yield, and the income dollar equivalent yield for fiscal year 2017, and other education changes.

Bill Referred

House bill of the following title:

H. 863. An act relating to making miscellaneous amendments to Vermont's retirement laws.

Was taken up and pursuant to Temporary Rule 44A was referred to the Committee on Government Operations.

Bill Referred

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

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

To the Committee on Rules pursuant to Temporary Rule 44A.

Bill Referred

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

H. 884. An act relating to approval of amendments to the charter of the City of Barre.

To the Committee on Rules pursuant to Temporary Rule 44A.

Bill Passed in Concurrence with Proposal of Amendment**H. 112.**

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

An act relating to access to financial records in adult protective services investigations.

Proposal of Amendment; Bill Passed in Concurrence with Proposals of Amendment**H. 171.**

House bill entitled:

An act relating to restrictions on the use of electronic cigarettes.

Was taken up.

Thereupon, pending third reading of the bill, Senators Ashe and White moved to amend the Senate proposal of amendment as follows:

First: In Sec. 2, 18 V.S.A. § 1421, in subdivision (b)(4), by designating the existing language to be subparagraph (A) and by adding a subparagraph (B) to read as follows:

(B) The prohibition on possession of lighted tobacco products and use of tobacco substitutes in a workplace shall not apply to any enclosed indoor areas, including the sleeping quarters and adjoining rooms, of an owner-operated lodging establishment that does not have employees who work inside the building and is clearly identified as a smoking facility.

Second: In Sec. 4, 18 V.S.A. § 1742, in subdivision (a)(2), following the word “guests”, by inserting before the semicolon “; provided, however, that possession of lighted tobacco products and use of tobacco substitutes is permitted in all enclosed indoor areas, including the sleeping quarters and adjoining rooms, of an owner-operated lodging establishment that does not have employees who work inside the building and is clearly identified as a smoking facility.”

Third: In Sec. 4, 18 V.S.A. § 1742, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

~~(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.~~

(1) The possession of lighted tobacco products and use of tobacco substitutes is prohibited in all enclosed indoor areas of hospitals and secure residential recovery facilities owned or operated by the State and residential facilities with which the State contracts to provide mental health or substance abuse treatment services, or both.

(2) Notwithstanding any provision of subsection (a) of this section to the contrary, the possession of lighted tobacco products and use of tobacco substitutes is permitted on the outdoor property surrounding hospitals and secure residential recovery facilities owned or operated by the State and residential facilities with which the State contracts to provide mental health or substance abuse treatment services, or both.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators Ashe and White?, Senator Baruth demanded pursuant to Rule 67 the *third* proposal of amendment be divided.

Thereupon, Senator White moved to amend the *first* proposal of amendment in Sec. 2, 18 V.S.A. § 1421(b)(4)(B) at the end of the subparagraph by adding before the period the following: and is clearly identified as a smoking facility and in the *second* proposal of amendment after the words “inside the building” by adding the following: and is clearly identified as a smoking facility

Which was agreed to.

Thereupon, the question, Shall the Senate proposal of Amendment be amended as recommended in the *first* and *second* proposals of amendment, as amended, by Senators Ashe and White?, was disagreed to on a roll call, Yeas 3, Nays 26.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Collamore, White.

Those Senators who voted in the negative were: Ayer, Balint, Baruth, Benning, Bray, Campbell, Campion, Cummings, Degree, Doyle, Flory, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Riehle, Rodgers, Sears, Sirotkin, Starr, Westman, Zuckerman.

The Senator absent and not voting was: McAllister (Suspended).

Thereupon, the *third* proposal of amendment was disagreed to on a division of the Senate, Yeas 12, Nays 16.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment. Yeas 24, Nays 5

Senator Mullin 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, Balint, Baruth, Bray, Campbell, Campion, Cummings, Degree, Doyle, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pollina, Riehle, Rodgers, Sears, Sirotkin, Starr, Westman, Zuckerman.

Those Senators who voted in the negative were: Benning, Collamore, Flory, Mullin, White.

The Senator absent and not voting was: McAllister (Suspended).

Proposed Amendment to the Constitution Disagreed To

Proposed Amendment to the Constitution of the State of Vermont designated as Proposal 1,

PROPOSAL 1

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to specifically provide that each person has a right to privacy, including the right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body.

Sec. 2. Article 22 of Chapter I of the Vermont Constitution is added to read:

Article 22. [RIGHT TO PRIVACY]

That each person has a right to privacy, including the right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2018 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

Thereupon, Proposal 1, having appeared on the Calendar for five legislative days pursuant to Rule 77, was read the second time in full pursuant to Rule 77.

Senator Benning, for the Committee on Government Operations, to which was referred the proposed amendment, reported recommending that the Senate accept and adopt the following proposal of amendment to the Constitution of the State of Vermont designated as Proposal 1 as herein submitted by the Committee on Government Operations, with the following amendment thereto:

PROPOSAL 1

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont specifically to provide that each individual has a right to privacy, including the right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body.

Sec. 2. Chapter I, Article 22 of the Vermont Constitution is added to read:

Article 22. [RIGHT TO PRIVACY]

That each individual has a right to privacy that shall not be infringed without the showing of a compelling State interest. This right includes the individual's right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body. This section shall not be construed to modify the public's right of access to public records and open meetings as provided by law.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2018 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

And that when so amended the Senate ought to adopt the Proposal and request that the House of Representatives concur therein.

Thereupon, pending the question, Shall the Proposed Amendment to the Constitution designated as Proposal 1 be amended as recommended by the Committee on Government Operations?, Senator Sears moved that the Proposal 1 be committed to the Judiciary Committee.

Thereupon, pending the question, Shall the bill be committed to the Committee on Judiciary?, Senator Sears requested and was granted leave to withdraw the motion.

Thereupon, pending the question, Shall the Proposed Amendment to the Constitution designated as Proposal 1 be amended as recommended by the Committee on Government Operations?, was disagreed to on a roll call pursuant to Rule 77, Yeas 14, Nays 15 (the necessary majority vote not having been attained).

Roll Call

Those Senators who voted in the affirmative were: Ayer, Baruth, Benning, Cummings, Doyle, Lyons, MacDonald, McCormack, Nitka, Pollina, Riehle, Sirotkin, White, Zuckerman.

Those Senators who voted in the negative were: Ashe, Balint, Bray, Campbell, Campion, Collamore, Degree, Flory, Kitchel, Mazza, Mullin, Rodgers, Sears, Starr, Westman.

The Senator absent and not voting was: McAllister (Suspended).

Thereupon, the question, Shall Proposal 1 be adopted on the part of the Senate?, was disagreed to on a roll call pursuant to Rule 77, Yeas 10, Nays 19 (the necessary majority vote not having been attained).

Roll Call

Those Senators who voted in the affirmative were: Ayer, Baruth, Benning, Cummings, Doyle, Lyons, MacDonald, McCormack, Pollina, White.

Those Senators who voted in the negative were: Ashe, Balint, Bray, Campbell, Campion, Collamore, Degree, Flory, Kitchel, Mazza, Mullin, Nitka, Riehle, Rodgers, Sears, Sirotkin, Starr, Westman, Zuckerman.

The Senator absent and not voting was: McAllister (Suspended).

Bill Passed in Concurrence

H. 608.

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

An act relating to solid waste management.

Bills Passed in Concurrence with Proposals of Amendment

House bills of the following titles were severally read the third time and passed in concurrence with proposals of amendment:

H. 280. An act relating to amending the State Board of Education rules on school lighting requirements.

H. 595. An act relating to potable water supplies from surface waters.

H. 622. An act relating to obligations for reporting child abuse and neglect and cooperating in investigations of child abuse and neglect.

H. 677. An act relating to the Restitution Unit.

H. 690. An act relating to the practice of acupuncture by physicians, osteopaths, and physician assistants.

H. 829. An act relating to water quality on small farms.

Third Reading Ordered

H. 580.

Senator MacDonald, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to conservation easements.

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.

Proposal of Amendment; Third Reading Ordered

H. 183.

Senator Flory, for the Committee on Institutions, to which was referred House bill entitled:

An act relating to security in the Capitol Complex.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1, 2 V.S.A. chapter 30, § 991, in subsection (b), subdivision (2), by striking out subsection (b), subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) In the first year, the Chair of the House Committee on Corrections and Institutions shall serve as Chair of the Committee and the Chair of the Senate Committee on Institutions shall serve as Vice Chair. Annually thereafter, the offices of Chair and Vice Chair shall rotate between the Chairs of the House Committee on Corrections and Institutions and the Senate Committee on Institutions.

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

Senator Sears, for the Committee on Appropriations, 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 Institutions.

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

Proposal of Amendment; Third Reading Ordered

H. 367.

Senator Bray, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to miscellaneous revisions to the municipal plan adoption, amendment, and update process.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. § 4350 is amended to read:

§ 4350. REVIEW AND CONSULTATION REGARDING MUNICIPAL PLANNING EFFORT

(a) A regional planning commission shall consult with its municipalities with respect to the municipalities' planning efforts, ascertaining the municipalities' needs as individual municipalities and as neighbors in a region, and identifying the assistance that ought to be provided by the regional planning commission. As a part of this consultation, the regional planning commission, after public notice, shall review the planning process of its member municipalities at least twice during an eight-year period, or more frequently on request of the municipality, and shall so confirm when a municipality:

(1) is engaged in a continuing planning process that, within a reasonable time, will result in a plan ~~which~~ that is consistent with the goals contained in section 4302 of this title; ~~and~~

(2) is engaged in a process to implement its municipal plan, consistent with the program for implementation required under section 4382 of this title; and

(3) is maintaining its efforts to provide local funds for municipal and regional planning purposes.

(b)(1) As part of the consultation process, the commission shall consider whether a municipality has adopted a plan. In order to obtain or retain

confirmation of the planning process ~~after January 1, 1996~~, a municipality must have an approved plan. A regional planning commission shall review and approve plans of its member municipalities, when approval is requested and warranted. Each review shall include a public hearing which is noticed at least 15 days in advance by posting in the office of the municipal clerk and at least one public place within the municipality and by publication in a newspaper or newspapers of general publication in the region affected. The commission shall approve a plan if it finds that the plan:

(A) is consistent with the goals established in section 4302 of this title;

(B) is compatible with its regional plan;

(C) is compatible with approved plans of other municipalities in the region; and

(D) contains all the elements included in subdivisions 4382(a)(1)-~~(10)~~(12) of this title.

~~(2) Prior to January 1, 1996, if a plan contains all the elements required by subdivisions 4382(a)(1)-(10) and is submitted to the regional planning commission for approval but is not approved, it shall be conditionally approved.~~

~~(e)(2)~~ A commission shall give approval or disapproval to a municipal plan or amendment within two months of its receipt following a final hearing held pursuant to section 4385 of this title. The fact that the plan is approved after the deadline shall not invalidate the plan. If the commission disapproves the plan or amendment, it shall state its reasons in writing and, if appropriate, suggest acceptable modifications. Submissions for approval that follow a disapproval shall receive approval or disapproval within 45 days.

~~(d)(3)~~ The commission shall file any adopted plan or amendment with the Department of Housing and Community Development within two weeks of receipt from the municipality. Failure on the part of the commission to file the plan shall not invalidate the plan.

(c) In order to retain confirmation of the planning process, a municipality shall document that it has reviewed and is actively engaged in a process to implement its adopted plan.

(1) When assessing whether a municipality has been actively engaged in a process to implement its adopted plan, the regional planning commission shall consider the activities of local boards and commissions with regard to the preparation or adoption of bylaws and amendments; capital budgets and programs; supplemental plans; or other actions, programs, or measures

undertaken or scheduled to implement the adopted plan. The regional planning commission shall also consider factors that may have hindered or delayed municipal implementation efforts.

(2) The consultation may include guidance by the regional planning commission with regard to resources and technical support available to the municipality to implement its adopted plan and recommendations by the regional planning commission for plan amendments and for updating the plan prior to readoption under section 4387 of this title.

~~(e)~~(d) During the period of time when a municipal planning process is confirmed:

(1) The municipality's plan will not be subject to review by the Commissioner of Housing and Community Development under section 4351 of this title.

(2) State agency plans adopted under 3 V.S.A. chapter 67 shall be compatible with the municipality's approved plan. ~~This provision shall not apply to plans that are conditionally approved under this chapter.~~

(3) The municipality may levy impact fees on new development within its borders, according to the provisions of chapter 131 of this title.

(4) The municipality shall be eligible to receive additional funds from the municipal and regional planning fund.

~~(f)~~(e) Confirmation and approval decisions under this section shall be made by majority vote of the commissioners representing municipalities, in accordance with the bylaws of the regional planning commission.

Sec. 2. 24 V.S.A. § 4385 is amended to read:

§ 4385. ADOPTION AND AMENDMENT OF PLANS; HEARING BY LEGISLATIVE BODY

* * *

(d) Plans may be reviewed from time to time and may be amended in the light of new developments and changed conditions affecting the municipality. An amendment to a plan does not affect or extend the plan's expiration date.

Sec. 3. 24 V.S.A. § 4387 is amended to read:

§ 4387. READOPTION OF PLANS

(a) All plans, including all prior amendments, shall expire every ~~five~~ eight years unless they are readopted according to the procedures in section 4385 of this title.

(b)(1) A municipality may readopt any plan that has expired or is about to expire. Prior to any readoption, the planning commission shall review and update the information on which the plan is based, and shall consider this information in evaluating the continuing applicability of the plan. In its review, the planning commission shall:

(A) consider the recommendations of the regional planning commission provided pursuant to subdivision 4350(c)(2) of this title;

(B) engage in community outreach and involvement in updating the plan;

(C) consider consistency with the goals established in section 4302 of this title;

(D) address the required plan elements under section 4382 of this title;

(E) evaluate the plan for internal consistency among plan elements, goals, objectives, and community standards;

(F) address compatibility with the regional plan and the approved plans of adjoining municipalities; and

(G) establish a program and schedule for implementing the plan.

(2) The readopted plan shall remain in effect for the ensuing five eight years unless earlier readopted.

(c) Upon the expiration of a plan, all bylaws and capital budgets and programs then in effect shall remain in effect, but shall not be amended until a plan is in effect.

(d) The fact that a plan has not been approved shall not make it inapplicable, except as specifically provided by this chapter. Bylaws, capital budgets, and programs shall remain in effect, even if the plan has not been approved.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2016. The eight-year expiration date for municipal plans applies to plans adopted or readopted on or after July 1, 2015. Plans adopted or readopted before July 1, 2015 shall expire in accordance with section 4387 of this title as it existed on the date of adoption or readoption.

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

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

Rules Suspended; Bill Committed

H. 863.

Pending entry on the Calendar for notice, on motion of Senator White, the rules were suspended and House bill entitled:

An act relating to making miscellaneous amendments to Vermont's retirement laws.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Government Operations, Senator White moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Government Operations *intact*,

Which was agreed to.

Bill Called Up

H. 74.

Senate bill of the following title was called up by Senator Ayer, and, under the rule, placed on the Calendar for action the tomorrow:

An act relating to safety protocols for social and mental health workers.

Message from the House No. 55

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

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

S. 214. An act relating to large group insurance.

S. 256. An act relating to extending the moratorium on home health agency certificates of need.

And has passed the same in concurrence.

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

S. 114. An act relating to the Open Meeting Law.

S. 116. An act relating to rights of offenders in the custody of the Department of Corrections.

S. 225. An act relating to miscellaneous changes to laws related to motor vehicles.

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

The House has considered Senate proposals of amendment to the following House bills:

H. 135. An act relating to enabling the Vermont Department of Health to reach an agreement with the Nuclear Regulatory Commission regarding authority over regulation and licensing of radioactive material.

H. 539. An act relating to establishment of a Pollinator Protection Committee.

H. 674. An act relating to public notice of wastewater discharges.

H. 765. An act relating to technical corrections.

H. 824. An act relating to the adoption of occupational safety and health rules and standards.

And has severally concurred therein.

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

H. 778. An act relating to State enforcement of the federal Food Safety Modernization Act.

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

Adjournment

On motion of Senator Campbell, the Senate adjourned until nine o'clock in the morning.