# Journal of the House

# Thursday, February 8, 2018

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

#### **Devotional Exercises**

Devotional exercises were conducted by Ebony Nyoni of Winooski, VT.

#### **House Bill Introduced**

H. 887

By Rep. Smith of Derby,

House bill, entitled

An act relating to establishing the Study Committee on Surveys of Land Burdened by Public Rights-of-Way;

Which was read and referred to the committee on Transportation.

## **Senate Bill Referred**

S. 179

Senate bill, entitled

An act relating to community justice centers

Was read and referred to the committee on Judiciary.

## **House Resolution Adopted**

H.R. 19

House resolution, entitled

House resolution recognizing the importance of the Black Lives Matter movement in the U.S. and Vermont Black communities

Offered by: Representatives Morris of Bennington, Ancel of Calais, Bartholomew of Hartland, Briglin of Thetford, Burke of Brattleboro, Chesnut-Tangerman of Middletown Springs, Christie of Hartford, Cina of Burlington, Colburn of Burlington, Conquest of Newbury, Copeland-Hanzas of Bradford, Emmons of Springfield, Gonzalez of Winooski, Grad of Moretown, Head of South Burlington, Howard of Rutland City, Jessup of Middlesex, Krowinski of Burlington, LaLonde of South Burlington, Long of Newfane, Masland of Thetford, McCormack of Burlington, Miller of Shaftsbury, Rachelson of Burlington, Scheu of Middlebury, Sharpe of Bristol, Sheldon of Middlebury,

Stevens of Waterbury, Stuart of Brattleboro, Sullivan of Burlington, Toleno of Brattleboro, Troiano of Stannard, Webb of Shelburne, Weed of Enosburgh, and Wood of Waterbury

Whereas, the murder of Trayvon Martin on February 26, 2012 in Florida sparked outrage in the Black community, and

Whereas, a strong perception following this homicide that the nation placed a low value on the lives of Black Americans led Alicia Garza, Opal Tometi, and Patrisse Cullors to form the Black Lives Matter movement (BLM), and

Whereas, BLM was formed to affirm Black Americans' humanity and resilience in the face of deadly oppression, and

Whereas, the killing of Michael Brown, 18 years of age, in Ferguson, Missouri, on August 9, 2014, ignited major growth in BLM, and

Whereas, according to the 2017 Police Violence Report, 25 percent of the people killed were Black Americans even though they constitute only 13 percent of the nation's population, and

Whereas, of the 147 unarmed persons police killed in 2017, 48 were Black Americans, approximately one-third of the total, and

Whereas, according to the U.S. Census estimates, as of July 1, 2016 only 1.3 percent of Vermonters are Black, and

Whereas, the General Assembly has acknowledged the problems Black Vermonters encounter with public safety officials, and in 2012 (Act 134) and 2014 (Act 193), the General Assembly enacted legislation leading to the establishment of bias-free policing policies, and

Whereas, BLM's Vermont literature states, "Black Lives Matter Vermont is a growing network of individuals, families and businesses invested in the liberation of Black Vermonters, and the deactivation of systemic racism endured by all people of color in our state," and

Whereas, although BLM supporters in Vermont include members of all races who have stood in solidarity with this nationwide movement, when Montpelier High School authorized the flying of a Black Lives Matter flag, perhaps the first public school in the nation to make this decision, the public response included a strong backlash of negative, hate-filled messages, a reaction that demonstrates Black Vermonters still face racism, and

Whereas, the Vermont Black Lives Matter movement has spurred a continuing dialogue with the goal of ensuring that all Vermonters are guaranteed fundamental civil rights and equality, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly recognizes the importance of the Black Lives Matter movement in the U.S. and Vermont Black communities, and be it further

<u>Resolved</u>: That the Secretary of State be directed to send a copy of this resolution to Shela Linton, Ebony Nyoni, and Mark Hughes.

Which was read.

Pending the question, Shall the resolution be adopted? **Rep. Gonzalez of Winooski** 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 resolution be adopted? was decided in the affirmative. Yeas, 130. Nays, 6.

#### Those who voted in the affirmative are:

Ancel of Calais Bancroft of Westford Bartholomew of Hartland Baser of Bristol Batchelor of Derby Beck of St. Johnsbury Belaski of Windsor Bissonnette of Winooski Bock of Chester Botzow of Pownal Briglin of Thetford Browning of Arlington Brumsted of Shelburne Buckholz of Hartford Burke of Brattleboro Canfield of Fair Haven Carr of Brandon Chesnut-Tangerman of Middletown Springs Christensen of Weathersfield Christie of Hartford Cina of Burlington \* Colburn of Burlington Condon of Colchester \* Conlon of Cornwall Connor of Fairfield Conquest of Newbury Copeland-Hanzas of Bradford Corcoran of Bennington Cupoli of Rutland City Dakin of Colchester Deen of Westminster Donahue of Northfield

Graham of Williamstown Haas of Rochester Harrison of Chittenden Head of South Burlington Helm of Fair Haven Higley of Lowell Hill of Wolcott Hooper of Montpelier Hooper of Randolph Houghton of Essex Howard of Rutland City Jessup of Middlesex Jickling of Randolph Joseph of North Hero \* Juskiewicz of Cambridge Keefe of Manchester Keenan of St. Albans City Kimbell of Woodstock Kitzmiller of Montpelier Krowinski of Burlington Lalonde of South Burlington Lanpher of Vergennes Lawrence of Lyndon Lefebvre of Newark Lewis of Berlin Lippert of Hinesburg Long of Newfane Lucke of Hartford Macaig of Williston Marcotte of Coventry Martel of Waterford Masland of Thetford Mattos of Milton McCoy of Poultney

Ode of Burlington Pajala of Londonderry Parent of St. Albans Town Partridge of Windham Poirier of Barre City Potter of Clarendon Pugh of South Burlington Quimby of Concord Rachelson of Burlington Read of Fayston Savage of Swanton Scheu of Middlebury Scheuermann of Stowe Sharpe of Bristol \* Shaw of Pittsford Sheldon of Middlebury Sibilia of Dover Smith of New Haven Squirrell of Underhill Stevens of Waterbury Strong of Albany \* Stuart of Brattleboro \* Sullivan of Dorset Sullivan of Burlington Taylor of Colchester Terenzini of Rutland Town Till of Jericho Toleno of Brattleboro Toll of Danville Townsend of South Burlington Trieber of Rockingham Troiano of Stannard Turner of Milton

Donovan of Burlington	McCullough of Williston	Walz of Barre City
Dunn of Essex	McFaun of Barre Town	Webb of Shelburne
Emmons of Springfield	Miller of Shaftsbury	Weed of Enosburgh
Fagan of Rutland City	Morris of Bennington	Willhoit of St. Johnsbury
Feltus of Lyndon	Morrissey of Bennington	Wood of Waterbury
Forguites of Springfield	Mrowicki of Putney	Wright of Burlington
Gannon of Wilmington	Murphy of Fairfax	Yacovone of Morristown
Gardner of Richmond	Myers of Essex	Yantachka of Charlotte
Giambatista of Essex	Nolan of Morristown	Young of Glover
Gonzalez of Winooski	Norris of Shoreham	
Grad of Moretown	Noyes of Wolcott	

# Those who voted in the negative are:

Beyor of Highgate	LaClair of Barre Town	Smith of Derby
Frenier of Chelsea	Rosenquist of Georgia *	Van Wyck of Ferrisburgh *

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

Ainsworth of Royalton	Town	McCormack of Burlington
Brennan of Colchester	Fields of Bennington	O'Sullivan of Burlington
Burditt of West Rutland	Gage of Rutland City	Pearce of Richford
Devereux of Mount Holly	Gamache of Swanton	Viens of Newport City
Dickinson of St. Albans	Hebert of Vernon	-

## **Rep. Cina of Burlington** explained his vote as follows:

# "Madam Speaker:

Article 1 of the Vermont Constitution states that 'all persons are born equally free and independent and have certain natural, inherent, and unalienable rights.' We must not rest until we repair the harm of our past, by uprooting and ending systemic racism in our present. Only then will we create a future where our societal institutions protect and serve all people, in ways that guarantee liberty and justice for all."

# **Rep. Condon of Colchester** explained his vote as follows:

# "Madam Speaker:

Although I have some issues with the wording of this resolution, I vote yes in recognition of the oppression faced by most ethnic groups, African Americans, Bosnian Americans, Irish Americans, Italian Americans and so many others. We should all unite against oppression."

# **Rep. Joseph of North Hero** explained his vote as follows:

## "Madam Speaker:

I voted yes but want to make it clear that I do not accept the suggestion that the criminal justice system in Vermont is as bad as those in other states."

# Rep. Rosenquist of Georgia explained his vote as follows:

# "Madam Speaker:

My son-in-law is a man of color; I love him dearly. However, I could not vote for this resolution since I believe it causes a greater separation between all people. I believe all lives matter – black and white and all together."

# **Rep. Sharpe of Bristol** explained his vote as follows:

# "Madam Speaker:

Events of the last couple of years have reminded me that although we may have made progress in my lifetime toward the vision put forth in the founding of this nation that 'all men are created equal', we still have far to go to realize the dream of Dr. Martin Luther King."

# **Rep. Strong of Albany** explained her vote as follows:

## "Madam Speaker:

I voted yes on this resolution and I would like to acknowledge the disproportionate number of black unborn children that have been aborted in our country that would have been included in the number of black lives that matter."

# **Rep. Stuart of Brattleboro** explained her vote as follows:

## "Madam Speaker:

This resolution brings a long dark chapter of America's history out of the darkness and into the light. Madam Speaker, may this resolution be one of many steps that affirm to Vermonters and everyone who wishes to visit, work, live, and play in our great state that black lives matter."

# **Rep. Van Wyck of Ferrisburgh** explained his vote as follows:

"Madam Speaker,

I voted No. Same reasons as last year. I'll email you a statement if you wish. Too long to say now."

# **Committee Relieved of Consideration** and Bill Committed to Other Committee

#### H. 875

**Rep. Grad of Moretown** moved that the committee on Judiciary be relieved of House bill, entitled

An act relating to immunity for recreational use of municipally owned land And that the bill be committed to the committee on Government Operations, which was agreed to.

# **Committee Relieved of Consideration** and Bill Committed to Other Committee

## H. 819

**Rep. Grad of Moretown** moved that the committee on Judiciary be relieved of House bill, entitled

An act relating to municipal authority to adopt nuisance ordinances regarding marijuana odor

And that the bill be committed to the committee on Government Operations, which was agreed to.

# Third Reading; Bill Passed

H. 585

House bill, entitled

An act relating to management of records

Was taken up, read the third time and passed.

# Third Reading; Bill Passed

H. 748

House bill, entitled

An act relating to electronic filing of proposed plans, plan amendments, and bylaws under Title 24

Was taken up, read the third time and passed.

## Third Reading; Bill Passed

H. 846

House bill, entitled

An act relating to the application of general law to chartered municipalities

Was taken up, read the third time and passed.

# Message from the Senate No. 20

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bill of the following title:

**S. 182.** An act relating to the investment authority of municipal trustees of public funds.

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

# Second Reading; Bill Amended; Third Reading Ordered

#### H. 663

**Rep. Partridge of Windham**, for the committee on Agriculture and Forestry, to which had been referred House bill, entitled

An act relating to municipal land use regulation of accessory on-farm businesses

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

## Sec. 1. PURPOSE

The General Assembly adopts this act to:

- (1) promote and facilitate the economic viability of Vermont's farms; and
- (2) increase the consistency across the State of municipal regulation and permitting of accessory activity that supports those farms.
- Sec. 2. 24 V.S.A. § 4412 is amended to read:

# § 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

\* \* \*

- (11) Accessory on-farm businesses. No bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm.
  - (A) Definitions. As used in this subdivision (11):
- (i) "Accessory on-farm business" means activity that is accessory to a farm and comprises one or both of the following:
- (I) The storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located.

- (II) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products.
- (ii) "Farm" means a parcel or parcels owned, leased, or managed by a person, devoted primarily to farming, and subject to the RAP rules. For leased lands to be part of a farm, the lessee must exercise control over the lands to the extent they would be considered as part of the lessee's own farm. Indicators of such control include whether the lessee makes day-to-day decisions concerning the cultivation or other farming-related use of the leased lands and whether the lessee manages the land for farming during the lease period.
- (iii) "Farming" shall have the same meaning as in 10 V.S.A. § 6001.
  - (iv) "Qualifying product" means a product that is wholly:
- (I) an agricultural, horticultural, viticultural, or dairy commodity, or maple syrup;
  - (II) livestock or cultured fish or a product thereof;
  - (III) a product of poultry, bees, an orchard, or fiber crops;
  - (IV) a commodity otherwise grown or raised on a farm; or
- (V) a product manufactured on one or more farms from commodities wholly grown or raised on one or more farms.
- (v) "RAP rules" means the rules on required agricultural practices adopted pursuant to 6 V.S.A. chapter 215, subchapter 2.
- (B) Eligibility. For an accessory on-farm business to be eligible for the benefit of this subdivision (11), the business shall comply with each of the following:
- (i) The business is operated by the farm owner, one or more persons residing on the farm parcel, or the lessee of a portion of the farm.
- (ii) The farm meets the threshold criteria for the applicability of the RAP rules as set forth in those rules.
- (C) Use of structures or land. An accessory on-farm business may take place inside new or existing structures or on the land.
- (D) Review; permit. Activities of an accessory on-farm business that are not exempt under section 4413 of this title may be subject to site plan review pursuant to section 4416 of this title. A bylaw may require that such

activities meet the same performance standards otherwise adopted in the bylaw for similar commercial uses pursuant to subdivision 4414(5) of this title.

- (E) Less restrictive. A municipality may adopt a bylaw concerning accessory on-farm businesses that is less restrictive than the requirement of this subdivision (11).
- (F) Notification; training. The Secretary of Agriculture, Food and Markets shall provide periodic written notification and training sessions to farms subject to the RAP rules on the existence and requirements of this subdivision (11) and the potential need for other permits for an accessory onfarm business, including a potable water and wastewater system permit under 10 V.S.A. chapter 64.

#### Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

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

# Second Reading; Bill Amended; Third Reading Ordered

#### H. 690

**Rep. Haas of Rochester**, for the committee on Human Services, to which had been referred House bill, entitled

An act relating to explanation of advance directives and treating clinicians who may sign a DNR/COLST

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. § 9701 is amended to read:

## § 9701. DEFINITIONS

As used in this chapter:

\* \*

# (21) "Ombudsman" means:

(A) an individual appointed as a long-term care ombudsman under the program contracted through the Department of Disabilities, Aging, and Independent Living pursuant to the Older Americans Act of 1965, as amended the State Long-Term Care Ombudsman or a representative of the Ombudsman's Office, as defined in 33 V.S.A. § 7501; or

(B) a representative of the agency designated as the Office of the Mental Health Care Ombudsman pursuant to section 7259 of this title.

\* \* \*

- (34) "Patient Mental health patient representative" means the mental health patient representative established by section 7253 of this title.
- Sec. 2. 18 V.S.A. § 9703 is amended to read:
- § 9703. FORM AND EXECUTION

\* \* \*

(b) The advance directive shall be dated, executed by the principal or by another individual in the principal's presence at the principal's express direction if the principal is physically unable to do so, and signed in the presence of two or more witnesses at least 18 years of age, who shall sign and affirm that the principal appeared to understand the nature of the document and to be free from duress or undue influence at the time the advance directive was signed. A health care provider may serve as a witness to the principal's execution of the advance directive under this subsection. If the principal is being admitted to or is a resident of a nursing home or residential care facility or is being admitted to or is a patient in a hospital at the time of execution, the individual who explained the nature and effect of the advance directive to the principal pursuant to subsection (d) or (e) of this section may also serve as one of the witnesses to the principal's execution of the advance directive under this subsection.

\* \* \*

- (d)(1) An advance directive shall not be effective if, at the time of execution, the principal is being admitted to or is a resident of a nursing home as defined in 33 V.S.A. § 7102 or a residential care facility, unless an ombudsman, a patient representative, a recognized member of the clergy, an attorney licensed to practice in this State, or a Probate Division of the Superior Court designee one of the following individuals explains the nature and effect of an advance directive to the principal and signs a statement affirming that he or she has explained the nature and effect of the advance directive to the principal provided the explanation:
  - (A) an ombudsman;
  - (B) a recognized member of the clergy;
  - (C) an attorney licensed to practice in this State;
  - (D) a Probate Division of the Superior Court designee;

- (E) an individual designated by a hospital pursuant to subsection 9709(d) of this title;
  - (F) a mental health patient representative;
- (G) an individual who is volunteering at the nursing home or residential care facility without compensation and has received appropriate training regarding the explanation of advance directives; or
- (H) the principal's primary care clinician, if the clinician is not employed by the nursing home or residential care facility at the time of the explanation.
- (2) It is the intent of this subsection to ensure that residents of nursing homes and residential care facilities are willingly and voluntarily executing advance directives.
- (e) An advance directive shall not be effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital, unless an ombudsman, a patient representative, a recognized member of the clergy, an attorney licensed to practice in this State, a Probate Division of the Superior Court designee, or an individual designated under subsection 9709(c) of this title by the hospital one of the following individuals has explained the nature and effect of an advance directive to the principal and signs a statement affirming that he or she has explained the nature and effect of the advance directive to the principal provided the explanation:
  - (1) an ombudsman;
  - (2) a recognized member of the clergy;
  - (3) an attorney licensed to practice in this State;
  - (4) a Probate Division of the Superior Court designee:
- (5) an individual designated by the hospital pursuant to subsection 9709(d) of this title; or
  - (6) a mental health patient representative.

\* \* \*

# Sec. 3. 18 V.S.A. § 9708 is amended to read:

- § 9708. AUTHORITY AND OBLIGATIONS OF HEALTH CARE PROVIDERS, HEALTH CARE FACILITIES, AND RESIDENTIAL CARE FACILITIES REGARDING DNR ORDERS AND COLST
- (a) As used in this section, "clinician" shall have the same meaning as in section 9701 of this title and shall also include a duly licensed medical doctor, osteopathic physician, advanced practice registered nurse or nurse practitioner,

or physician assistant who treated the patient outside Vermont and held a valid license to practice in the state in which the patient was located at the time the DNR/COLST was issued.

\* \* \*

# Sec. 4. 18 V.S.A. § 9709(d) is amended to read:

- (d)(1) Each nursing home and residential care facility that chooses to use volunteers to explain to residents the nature and effect of an advance directive as required by subsection 9703(d) of this title shall ensure that the volunteers have received appropriate training regarding the explanation of advance directives.
- (2) Every hospital shall designate an adequate number of individuals to explain the nature and effect of an advance directive to patients as required by subsection 9703(e) of this title.

## Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

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

Pending the question, Shall the bill be amended as recommended by the Committee on Human Services? **Rep. Lippert of Hinesburg** 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 recommended by the Committee on Human Services? was decided in the affirmative. Yeas, 135. Nays, 0.

#### Those who voted in the affirmative are:

Ancel of Calais Bancroft of Westford Bartholomew of Hartland Baser of Bristol Batchelor of Derby Beck of St. Johnsbury Belaski of Windsor Beyor of Highgate Bissonnette of Winooski **Bock of Chester** Botzow of Pownal Briglin of Thetford Brumsted of Shelburne Buckholz of Hartford Burke of Brattleboro Canfield of Fair Haven Carr of Brandon

Haas of Rochester Harrison of Chittenden Head of South Burlington Hebert of Vernon Helm of Fair Haven Hill of Wolcott Hooper of Montpelier Hooper of Randolph Houghton of Essex Howard of Rutland City Jessup of Middlesex Jickling of Randolph Joseph of North Hero Juskiewicz of Cambridge Keefe of Manchester Keenan of St. Albans City Kimbell of Woodstock

Parent of St. Albans Town Partridge of Windham Pearce of Richford Poirier of Barre City Potter of Clarendon Pugh of South Burlington Quimby of Concord Rachelson of Burlington Read of Fayston Rosenquist of Georgia Savage of Swanton Scheu of Middlebury Scheuermann of Stowe Sharpe of Bristol Shaw of Pittsford Sheldon of Middlebury Sibilia of Dover

Chesnut-Tangerman of Middletown Springs Christensen of Weathersfield Christie of Hartford Cina of Burlington Colburn of Burlington Condon of Colchester Conlon of Cornwall Connor of Fairfield Conquest of Newbury Corcoran of Bennington Cupoli of Rutland City Dakin of Colchester Deen of Westminster Devereux of Mount Holly Donahue of Northfield Donovan of Burlington Dunn of Essex **Emmons of Springfield** Fagan of Rutland City Feltus of Lyndon Forguites of Springfield Frenier of Chelsea Gamache of Swanton Gannon of Wilmington Gardner of Richmond Giambatista of Essex Grad of Moretown Graham of Williamstown

Kitzmiller of Montpelier Krowinski of Burlington LaClair of Barre Town Lalonde of South Burlington Lanpher of Vergennes Lawrence of Lyndon Lefebvre of Newark Lewis of Berlin Lippert of Hinesburg Long of Newfane Lucke of Hartford Macaig of Williston Marcotte of Coventry Martel of Waterford Masland of Thetford Mattos of Milton McCoy of Poultney McCullough of Williston McFaun of Barre Town Miller of Shaftsbury Morrissey of Bennington Mrowicki of Putney Murphy of Fairfax Myers of Essex Nolan of Morristown Norris of Shoreham Noves of Wolcott Ode of Burlington Pajala of Londonderry

Smith of New Haven Squirrell of Underhill Stevens of Waterbury Strong of Albany Stuart of Brattleboro Sullivan of Dorset Sullivan of Burlington Taylor of Colchester Terenzini of Rutland Town Till of Jericho Toleno of Brattleboro Toll of Danville Townsend of South Burlington Trieber of Rockingham Troiano of Stannard Turner of Milton Van Wyck of Ferrisburgh Viens of Newport City Walz of Barre City Webb of Shelburne Weed of Enosburgh Willhoit of St. Johnsbury Wood of Waterbury Wright of Burlington Yacovone of Morristown Yantachka of Charlotte Young of Glover

Those who voted in the negative are: none

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

Ainsworth of Royalton Brennan of Colchester Browning of Arlington Burditt of West Rutland Copeland-Hanzas of Bradford Dickinson of St. Albans Town Fields of Bennington Gage of Rutland City Gonzalez of Winooski Higley of Lowell

McCormack of Burlington Morris of Bennington O'Sullivan of Burlington Smith of Derby

Thereupon, third reading was ordered.

# Committee Relieved of Consideration and Bill Committed to Other Committee

H. 726

**Rep. Partridge of Windham** moved that the committee on Agriculture and Forestry be relieved of House bill, entitled

An act relating to creating a voluntary pollinator-friendly standard for solar

arrays

And that the bill be committed to the committee on Energy and Technology, which was agreed to.

# Adjournment

At two o'clock and forty-eight minutes in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.