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

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

Resolved: 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  Graham of Williamstown  Ode of Burlington
Bancroft of Westford  Haas of Rochester  Pajala of Londonderry
Bartholomew of Hartland  Harrison of Chittenden  Parent of St. Albans Town
Baser of Bristol  Head of South Burlington  Partridge of Windham
Batchelor of Derby  Helm of Fair Haven  Poirier of Barre City
Beck of St. Johnsbury  Higley of Lowell  Potter of Clarendon
Belaski of Windsor  Hill of Wolcott  Pugh of South Burlington
Bissonnette of Winooski  Hooper of Montpelier  Quimby of Concord
Bock of Chester  Hooper of Randolph  Rucherson of Burlington
Botzow of Pownal  Houghton of Essex  Read of Fayston
Briglin of Thetford  Howard of Rutland City  Savage of Swanton
Browning of Arlington  Jessup of Middlesex  Scheu of Middlebury
Brumsted of Shelburne  Jickling of Randolph  Scheuermann of Stowe
Buckholz of Hartford  Joseph of North Hero *  Sharpe of Bristol *
Burke of Brattleboro  Juskiewicz of Cambridge  Shaw of Pittsford
Canfield of Fair Haven  Keefe of Manchester  Sheldon of Middlebury
Carr of Brandon  Keeman of St. Albans City  Sibilia of Dover
Chesnut-Tangerman of Middletown Springs  Kimbell of Woodstock  Smith of New Haven
Christensen of Weathersfield  Kitzmiller of Montpelier  Squirrel of Underhill
Christie of Hartford  Krowinski of Burlington  Stevens of Waterbury
Cina of Burlington *  Lalonde of South Burlington  Strong of Albany *
Colburn of Burlington  Lanphier of Vergennes  Stuart of Brattleboro *
Condon of Colchester *  Lawrence of Lyndon  Sullivan of Dorset
Conlon of Cornwall  Lefebvre of Newark  Sullivan of Burlington
Connor of Fairfield  Lewis of Berlin  Taylor of Colchester
Conquest of Newbury  Lippert of Hinesburg  Terenzini of Rutland Town
Copeland-Hanzas of Conquest of Newbury  Long of Newfane  Till of Jericho
Bradford  Lucke of Hartford  Toleno of Brattleboro
Corcoran of Bennington  Macaig of Williston  Toll of Danville
Cupoli of Rutland City  Marcotte of Coventry  Townsend of South
Dakin of Colchester  Martel of Waterford  Burlington
Deen of Westminster  Masland of Thetford  Trieb of Rockingham
Donahue of Northfield  Mattos of Milton  Troiano of Stannard

* indicates representation by a politician who is not present in the House.
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  |  Morrissy 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 on-farm 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  Haas of Rochester  Parent of St. Albans Town
Bancroft of Westford  Harrison of Chittenden  Partridge of Windham
Bartholomew of Hartland  Head of South Burlington  Pearce of Richford
Baser of Bristol  Hebert of Vernon  Poirier of Barre City
Batchelor of Derby  Helm of Fair Haven  Potter of Clarendon
Beck of St. Johnsbury  Hill of Wolcott  Pugh of South Burlington
Belaski of Windsor  Hooper of Montpelier  Quimby of Concord
Beyor of Highgate  Hooper of Randolph  Raclelson of Burlington
Bissonnette of Winooski  Houghton of Essex  Read of Fayston
Bock of Chester  Howard of Rutland City  Rosenquist of Georgia
Botzow of Pownal  Jessup of Middlesex  Savage of Swanton
Briglin of Thetford  Jickling of Randolph  Scheu of Middlebury
Brumsted of Shelburne  Joseph of North Hero  Scheuermann of Stowe
Buckholz of Hartford  Juskiewicz of Cambridge  Sharpe of Bristol
Burke of Brattleboro  Keefe of Manchester  Shaw of Pittsford
Canfield of Fair Haven  Keenan of St. Albans City  Sheldon of Middlebury
Carr of Brandon  Kimbell of Woodstock  Sibilia of Dover
Those who voted in the negative are: none

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

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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
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.