

Journal of the Senate

THURSDAY, APRIL 4, 2019

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Paul Sangree of Randolph.

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 176.

By Senator White,

An act relating to privatization contracts.

To the Committee on Government Operations.

Bill Referred

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

H. 543.

An act relating to capital construction and State bonding.

To the Committee on Institutions.

Bill Passed

S. 131.

Senate bill of the following title was read the third time and passed:

An act relating to insurance and securities.

Bill Amended; Bill Passed

S. 163.

Senate bill entitled:

An act relating to housing safety and rehabilitation.

Was taken up.

Thereupon, pending third reading of the bill, Senators Sirotkin and Cummings moved to amend the bill by adding a new section to be numbered Sec. 13 to read as follows:

* * * Affordable Housing * * *

Sec. 13. STATE TREASURER RECOMMENDATION FOR FINANCING
OF AFFORDABLE HOUSING INITIATIVE

(a) Evaluation. On or before January 15, 2020, the State Treasurer shall evaluate options for financing affordable housing in the State. The evaluation shall include:

(1) a plan, formed in consultation with interested stakeholders, for the creation of 1,000 housing units over five years for Vermonters with incomes up to 120 percent of the area median income as determined by the U.S. Department of Housing and Urban Development;

(2) alternatives for financing the plan that take into consideration the use of appropriations, general obligation bonds, revenue bonds, investments, new revenues, and other financing mechanisms, including initiatives undertaken by other states;

(3) an assumption that the 1,000 units shall be in addition to what would otherwise have been produced through projected base appropriations available to the Vermont Housing and Conservation Board over five years commencing with FY 2021; and

(4) provision for meeting housing needs in the following areas:

(A) creating new multifamily and single-family homes;

(B) addressing blighted properties and other existing housing stock requiring reinvestment, including in mobile home parks; and

(C) providing service-supported housing in coordination with the Agency of Human Services, including for those who are elderly, homeless, in recovery, experiencing severe mental illness, or leaving incarceration.

(b) Cooperation. In conducting the evaluation described in subsection (a) of this section, the State Treasurer shall have the cooperation of the Agency on Commerce and Community Development and the Department of Taxes.

(c) Report. The State Treasurer shall submit a report with recommendations based on the evaluation described in subsection (a) of this section to the Senate Committees on Economic Development, Housing and General Affairs, on Appropriations, and on Finance and the House Committees on General, Housing, and Military Affairs, on Appropriations, and on Ways

and Means. The report shall also include a legislative proposal to implement the recommendations proposed in the report.

And by renumbering the remaining section to be numerically correct.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

Bill Passed in Concurrence

H. 59.

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

An act relating to the codification of the charter of the Rutland County Solid Waste District.

Bills Passed in Concurrence with Proposal of Amendment

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

H. 146. An act relating to increasing the number of examiners on the Board of Bar Examiners from nine to 11 members.

H. 394. An act relating to the disposition of the remains of veterans.

Third Reading Ordered

H. 218.

Senator Ingram, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to lead poisoning prevention.

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 Amended; Third Reading Ordered

S. 111.

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) According to the U.S. Department of Veterans Affairs (VA), “burn pits were a common way to get rid of waste at military sites in Iraq and Afghanistan.”

(2) At present, the U.S. Department of Veterans Affairs provides contradictory information about the health impacts on soldiers of exposure to burn pits.

(3) On the one hand, the Department’s website says, “At this time, research does not show evidence of long-term health problems from exposure to burn pits. VA continues to study the health of deployed Veterans.”

(4) On the other hand, under the heading “Health effects from burn pit smoke” the VA states that “Toxins in burn pit smoke may affect the skin, eyes, respiratory and cardiovascular systems, gastrointestinal tract and internal organs. Veterans who were closer to burn pit smoke or exposed for longer periods may be at greater risk. Health effects depend on a number of other factors, such as the kind of waste being burned and wind direction. Most of the irritation is temporary and resolves once the exposure is gone. This includes eye irritation and burning, coughing and throat irritation, breathing difficulties, and skin itching and rashes. The high level of fine dust and pollution common in Iraq and Afghanistan may pose a greater danger for respiratory illnesses than exposure to burn pits, according to a 2011 Institute of Medicine report.”

(5) According to the VA, the waste products in burn pits include “chemicals, paint, medical and human waste, metal/aluminum cans, munitions and other unexploded ordnance, petroleum and lubricant products, plastics, rubber, wood, and discarded food.”

(6) In the past, the U.S. Armed Forces have been slow to acknowledge the physical injuries associated with environmental exposure during service members’ active duty. Notable examples of this include exposure to Agent Orange during the Vietnam War and the condition known as Gulf War Veterans’ Medically Unexplained Illness.

(7) After a period of equivocation, the U.S. government has usually acknowledged what veterans know too well—that their illnesses and suffering are real, that it is connected to their military service, and that the U.S. government must treat and compensate the veterans.

(8) Exposure to burn pits should be addressed proactively, and the State of Vermont and the U.S. government should prioritize the health of service members and veterans and not repeat past patterns of denial.

(9) A registry called the Airborne Hazards and Open Burn Pit Registry has been created to track service members who may have been exposed to burn pits. Between June 2014 and December 2018, 394 Vermonters joined the Registry.

(10) It is important that every Vermonter who was or may have been exposed to burn pits should participate in the Registry.

Sec. 2. DEPARTMENT OF HEALTH; EDUCATIONAL MATERIALS

(a)(1) On or before July 1, 2019, the Commissioner of Health, in consultation with the Adjutant and Inspector General and the U.S. Department of Veterans Affairs, shall develop written educational materials that provide information about health effects that are associated with chemicals identified at open burn pits during overseas military deployments, including:

(A) information regarding how to participate in the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry and resources that can provide assistance with the registration process;

(B) information regarding the eligibility requirements for participation in the Registry, including deployment locations and dates;

(C) contact information for the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry; and

(D) contact information for the Vermont Environmental Health Coordinator at the White River Junction VA facility.

(2)(A) On or before July 1, 2019, the information shall be made available on the Department of Health and the Office of Veterans Affairs websites.

(B) The Department of Health, in cooperation with appropriate professional licensing boards and professional membership associations, shall ensure the information is made available to all licensed health care providers in Vermont on or before July 1, 2019.

(b) On or before July 1, 2019, the Commissioner of Health and the Adjutant and Inspector General, in coordination with any available and interested federal or State agency, shall develop a pamphlet or other written informational material regarding the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry, including:

(1) information regarding the eligibility requirements for participation in the Registry, including deployment locations and dates;

(2) information regarding how to participate in the Registry and resources that can provide assistance with the registration process;

(3) the symptoms associated with exposure to open burn pits during overseas military deployments;

(4) contact information for the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry; and

(5) contact information for the Vermont Environmental Health Coordinator at the White River Junction VA facility.

Sec. 3. COMMUNICATION TO SERVICE MEMBERS AND VETERANS;
NATIONAL GUARD; OFFICE OF VETERANS AFFAIRS

(a) Beginning on or before July 1, 2019, the Adjutant and Inspector General and the Executive Director of the Vermont Office of Veterans Affairs, in consultation with any available and interested federal or State agency, shall collaborate to contact all members of the Vermont National Guard and all known veterans and members of the U.S. Armed Forces residing in Vermont who may be eligible to participate in the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry. In particular, the Adjutant and Inspector General and the Executive Director of the Vermont Office of Veterans Affairs shall contact all members of the Vermont National Guard and any veteran or member of the U.S. Armed Forces residing in Vermont who may have served in any of the following:

(1) Operation Enduring Freedom, Operation Iraqi Freedom, or Operation New Dawn;

(2) Djibouti, Africa, on or after September 11, 2001;

(3) Afghanistan, on or after September 11, 2001;

(4) Operation Desert Shield or Operation Desert Storm; or

(5) in the Southwest Asia theater of operations on or after August 2, 1990.

(b) Each veteran or service member contacted shall be encouraged to join the Registry and shall be provided with:

(1) contact information for the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry; and

(2) a copy of the pamphlet created by the Commissioner of Health and the Adjutant and Inspector General pursuant to Sec. 2 of this Act.

Sec. 4. ADJUTANT AND INSPECTOR GENERAL; COORDINATION
WITH U.S. DEPARTMENT OF VETERANS AFFAIRS

(a) On or before July 1, 2019, the Adjutant and Inspector General shall encourage the U.S. Department of Veterans Affairs to enhance and simplify the registration process for the Airborne Hazards and Open Burn Pit Registry by providing for:

(1) identification verification for DS Logon Level 2 access to be made available at U.S. Department of Veterans Affairs' community-based outpatient clinics throughout Vermont;

(2) the creation of a paper registration option; and

(3) the creation of a process for deceased veteran's family members to participate in the Registry on behalf of a deceased veteran.

(b)(1) On or before July 1, 2019, the Adjutant and Inspector General shall request that the Periodic Health Assessment for members of the Vermont National Guard determine whether the Guard member was deployed to a location that would make him or her eligible to participate in the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry, and whether the Guard member was exposed to open burn pits during his or her deployment to that location.

(2) On or before July 1, 2019, the Adjutant and Inspector General shall request that any member of the Vermont National Guard who during his or her Periodic Health Assessment is identified as having been potentially exposed to open burn pits during a deployment is automatically registered to participate in the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered, on a roll call, Yeas, 30, Nays 0.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Benning, Bray, Brock, Champion, Clarkson, Collamore, Cummings, Hardy,

Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, McNeil, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

Those Senators who voted in the negative were: None.

Proposal of Amendment; Third Reading Ordered

H. 7.

Senator White, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to second degree aggravated domestic assault.

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. 13 V.S.A. § 1044 is amended to read:

§ 1044. SECOND DEGREE AGGRAVATED DOMESTIC ASSAULT

(a) A person commits the crime of second degree aggravated domestic assault if the person:

(1) Commits the crime of domestic assault and such conduct violates:

(A) specific conditions of a criminal court order in effect at the time of the offense imposed to protect that other person;

(B) a final abuse prevention order issued under 15 V.S.A. § 1103 or a similar order issued in another jurisdiction;

(C) a final order against stalking or sexual assault issued under 12 V.S.A. § 5133 or a similar order issued in another jurisdiction; or

(D) a final order against abuse of a vulnerable adult issued under 33 V.S.A. § 6935 or a similar order issued in another jurisdiction.

(2) Commits the crime of domestic assault; and

(A) has a prior conviction within the last 10 years for violating an abuse prevention order issued under section 1030 of this title; or

(B) has a prior conviction for domestic assault under section 1042 of this title or a prior conviction in another jurisdiction for an offense that, if committed within the State, would constitute a violation of section 1042 of this title.

(3) For the purpose of this subsection, ~~the term:~~

(A) “issued Issued in another jurisdiction” means issued by a court in any other state; in a federally recognized Indian tribe, territory, or possession of the United States; in the Commonwealth of Puerto Rico; or in the District of Columbia.

(B) “Prior conviction in another jurisdiction” means a conviction issued by a court in any other state; in a federally recognized Indian tribe, territory, or possession of the United States; in the Commonwealth of Puerto Rico; or in the District of Columbia.

(b) A person who commits the crime of second degree aggravated domestic assault shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

* * *

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

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.

Proposal of Amendment; Third Reading Ordered

H. 19.

Senator Benning, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to sexual exploitation of a person in law enforcement officer custody.

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. 13 V.S.A. § 3251 is amended to read:

§ 3251. DEFINITIONS

As used in this chapter:

* * *

(9) “Law enforcement officer” means a person certified as a law enforcement officer under the provisions of 20 V.S.A. chapter 151.

Sec. 2. 13 V.S.A. § 3259 is added to read:

§ 3259. SEXUAL EXPLOITATION OF A PERSON IN THE CUSTODY OF
A LAW ENFORCEMENT OFFICER

(a) No law enforcement officer shall engage in a sexual act with a person whom the officer is detaining, arresting, or otherwise holding in custody or who the officer knows is being detained, arrested, or otherwise held in custody by another law enforcement officer.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

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.

**Proposed Amendment to the Constitution Amended; Proposed
Amendment to the Constitution Adopted**

The report of the Committee on Health and Welfare on Proposed Amendment to the Constitution designated as Proposal 5.

Was taken up.

Senator Lyons, for the Committee on Health and Welfare, to which was referred the proposed amendment, reported that the committee had considered Proposal 5 which is printed in full below:

Thereupon, Proposal 5, having appeared on the Calendar for five legislative days pursuant to Rule 77, was read the second time in full pursuant to Rule 77,

PROPOSAL 5

Sec. 1. PURPOSE

(a) This proposal would amend the Constitution of the State of Vermont to ensure that every Vermonter is afforded personal reproductive liberty. The Constitution is our founding legal document stating the overarching values of our society. This amendment is in keeping with the values espoused by the current Vermont Constitution. Chapter I, Article 1 declares "That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights." Chapter I, Article 7 states "That government is, or ought to be, instituted for the common benefit, protection, and security of the

people.” The core value reflected in Article 7 is that all people should be afforded all the benefits and protections bestowed by the government, and that the government should not confer special advantages upon the privileged. This amendment would reassert the principles of equality and personal liberty reflected in Articles 1 and 7 and ensure that government does not create or perpetuate the legal, social, or economic inferiority of any class of people. This proposed constitutional amendment is not intended to limit the scope of rights and protections afforded by Article 7 or any other provision in the Vermont Constitution.

(b) The right to reproductive liberty is central to the exercise of personal autonomy and involves decisions people should be able to make free from compulsion of the State. Enshrining this right in the Constitution is critical to ensuring equal protection and treatment under the law and upholding the right of all people to health, dignity, independence, and freedom.

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

Article 22. [Personal reproductive liberty]

That the people are guaranteed the liberty and dignity to determine their own life’s course. The right to personal reproductive autonomy is central to the liberty protected by this Constitution and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.

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 2022 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

Senator Lyons, for the Committee Health and Welfare, to which was referred Proposal 5, reported that Proposal 5 to the Constitution of the State of Vermont be amended by striking Sec. 2 in its entirety and inserting in lieu thereof the following:

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

Article 22. [Personal reproductive liberty]

That an individual’s right to personal reproductive autonomy is central to the liberty and dignity to determine one’s own life course as protected by this Constitution, and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.

Thereupon, pending the question, Shall the Proposed Amendment to the Constitution designated as Proposal 5 be amended as recommended by the Committee on Health and Welfare?, Senators Lyons, Cummings, Ingram, McCormack and Westman moved that the recommendation of the Committee on Health and Welfare be amended in Sec. 2 (Article 22) by striking out the following: “as protected by this Constitution.”

Which was decided in the affirmative on a roll call pursuant to Rule 77, Yeas 29, Nays 1 (the necessary majority vote having been attained.)

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Benning, Bray, Brock, Campion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

Those Senators who voted in the negative were: McNeil.

Thereupon, the pending question, Shall the Proposed Amendment to the Constitution designated as Proposal 5 be amended as recommended by the Committee on Health and Welfare, as amended?, was decided in the affirmative on a roll call pursuant to Rule 77, Yeas 28, Nays 2 (the necessary majority vote having been attained).

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Benning, Bray, Brock, Campion, Clarkson, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

Those Senators who voted in the negative were: Collamore, McNeil.

***During debate of the measure, Senator Lyons addressed the Chair in proposing her amendment to the Proposed Amendment to the Constitution, and on a rules suspension made by Senator McCormack, her remarks were ordered enter in the Journal, and are as follows:

“Thank you Mr. President I will speak today to the Proposal and the amendments of Article 22 introduced by all members the Senate Health and Welfare Committee. I will present information that addresses why Prop 5 is important –why this Constitutional amendment should go to the voters. I will present some of the information the committee heard as we developed the proposal, and how the committee worked to develop it. I will talk about how Prop 5 reflects our state values, and what is included in prop 5. Finally I will briefly present the process for approving this Constitutional Amendment.

“When approved by the voters Proposition 5 will provide a fundamental right – ensuring personal reproductive autonomy for Vermonters. Consistent with other rights in our Constitution we intend it to be an umbrella. In this case an umbrella that covers the most personal decisions we make about our lives.

“Much of what I say to present this Constitutional Amendment proposal to you will be about women, specifically about women’s right to choose. But Article 22 includes more than abortion rights. If approved it will ensure reproductive liberty for family planning, contraception, and decisions important to both men and women. These are the personal decisions of when to have children that can be based on one’s economic or family stability.

“Ultimately, if the Senate and House concur on Prop 5 during this and the next biennium, the proposal will go to the voters to decide yea or nay. That will be a vote on the fundamental right of reproductive liberty – personal reproductive autonomy- It will affirm the right to abortion as it currently exists in our state – unless regulation is justified by a compelling state interest achieved by the least restrictive means. This is consistent with the standard of strict scrutiny. The standard of strict scrutiny is how the U.S. Supreme Court interprets whether laws are constitutional, when fundamental rights are involved.

“As recommended by your Senate Health and Welfare Committee, Proposal 5 includes a purpose section which helps set a Constitutional context for the new article. Historically, proposals of constitutional amendment have not always contained a purpose section. Because of the shifting jurisprudence on reproductive liberties at the federal level, our committee felt it was important to include a purpose section to provide context and direct guidance to the courts in their interpretation of Article 22. The purpose section roots the newly enumerated right to reproductive freedom in existing constitutional principles of equality and liberty. The purpose section will not be voted on by the voters, nor will it become part of the constitution. Only Article 22 will be added if we and then the voters approve. You will see in the purpose a reference to Article 1 of Vermont’s Constitution. Article 1 states that “all persons are *born* equally free and independent, and have certain...rights, amongst which are...enjoying life and liberty...and pursuing and obtaining happiness and safety”. Article 7 is our common benefits clause. It affirms that the public health of Vermont citizens is ensured equally, and not for any one group or individual over another. As we heard when the purpose section was read, Prop 5 is in keeping with the principles of liberty and equality reflected in Articles 1 and 7, but will not limit the scope of rights afforded by any provision in the Constitution.

“Personal reproductive decisions implicate many freedoms of opportunity, including the opportunity to pursue education and work, to plan a family, and to choose how to live one’s life. Without the autonomy to decide for oneself about when to have a family, many women and men become stuck in a lifelong struggle for success.

“Most of you do not remember the tenuous and sometimes tortuous times before 1973 and Roe vs. Wade. Not only was abortion a back room activity but also contraception was not readily available. In 1965 and ’72 Supreme Court cases struck down limitations to contraceptive access and affirmed that married and single persons should have access to contraception. These decisions were based on an interpretation of the US Constitution (14th amendment due process and equal protection clause) declaring a right to privacy. (GRISWOLD VS CT 1965 AND EISENSTADT VS BARID 1972) It was a year later in 1973 that the Supreme Court Roe v Wade decision was handed down. Personal Privacy was cited for protecting a women’s decision whether to carry a pregnancy to term. In Roe v Wade the Court limited its interpretation of privacy as a fundamental right to the realm of contraception, procreation, and related topics of child rearing and education, family relationships, and marriage. Roe v Wade has informed Vermont’s legal relationship with abortion until the present day.

“In 1972 the Vermont Supreme Court in Leahy vs. Beechman declared a 1947 law unconstitutional (Jeffords AG). The law made it a crime for doctors to provide abortions but did not criminalize the act of obtaining an abortion. VT’s Supreme Court determined that women’s health was not protected under that VT law (since they couldn’t access appropriate care for the abortion procedure) and struck it down.

“Since 1972 we have seen the results of allowing men and women to make their own decisions about family planning, contraception, and abortion. Senate Health and Welfare heard from the Commission on Women that access to reproductive health care – to contraception and family planning has resulted in ‘an increase in women’s wages, participation in the labor force, and in completion rates of college. Children born after access to reproductive services like family planning were 12% less likely to be in households receiving public assistance, 7% less likely to live in poverty, and more likely to go to college. Being able to determine when to have a family / how to determine one’s life course can have an effect on social and economic success. Barriers to family planning – to reproductive rights - can be a barrier to equal opportunity. This is supported by national data from the Human Rights commission where black, Hispanic, and women with lower socioeconomic backgrounds are less likely to have insurance coverage for contraception and family planning. The ACLU brought similar information about how government intrusion into the right to

reproductive liberty is a roadblock to social, educational, and economic success.

“Vermont’s medical community provides ethical medical treatment for men and women seeking access to contraception. Since *Roe v Wade*, Vermont trusts women and their doctors to make appropriate decisions about abortion. Vermont’s medical community shared with our committee the process that a doctor and a woman go through to determine if an abortion after viability is indicated to protect her life or health. Ethical guidelines are robust. Unlike other states Vermont does not require women to jump through government imposed regulatory hoops or encounter barriers to access health care. We learned that 91.7% of all (1298- 2016) abortions occur within the first trimester (12 weeks) most for women between 25-29 years/ 17 post 21 weeks (1.3%)

“Since 1992, U.S. Supreme Court decisions have begun to dismantle *Roe v Wade*. This began by changing the standard of scrutiny used by the Court to analyze state laws imposing restrictions on women’s right to choose. Since 2011, states have passed more than 400 new abortion restrictions imposing barriers to reproductive health care and inflicting shame on women seeking help. Since 2018, 37 states have introduced over 300 abortion restrictions, (26 in 11 states). 20 states are ready to ban abortion when *Roe v Wade* is overturned. (Over 1/3 of all women in country- 25million)

“Maine, Nevada, Washington, Maryland, Hawaii, Oregon, California, NY, Connecticut and Delaware have laws protecting freedom of Choice – some consistent with *Roe v Wade*. VT does not have such a law. Some states have constitutional amendments or laws that rely on privacy as the basis for reproductive liberty. (Alaska, Calif., Fla, Montana)When *Roe v Wade* falls, those provisions may be called into question. This is one reason the Senate Health and Welfare committee did not use privacy as a basis for our proposal.

“The Health and Welfare Committee developed Prop 5 based on our constitution for a narrowly crafted proposal. Article 22 will require courts to evaluate restrictions on the right to reproductive liberty using a strict scrutiny analysis. Personal reproductive autonomy shall not be denied or infringed upon unless justified by a compelling state interest achieved by the least restrictive means. (Meaning that Vermont can regulate the right if it has a compelling interest in doing so, and the regulation is narrowly crafted to achieve that compelling interest)

“Health and Welfare reviewed Prop 5 after taking testimony and listening to our Senate colleagues. I can’t say enough about the thoughtfulness and deliberation that each member of the committee gave to this issue. The

Committee made some key decisions to build the language in the latest amendment before you.

“We took Testimony to understand how to build a legally defensible protection for reproductive liberty that is not too broad or too narrow.

“We have reduced the proposal to one sentence. We believe this offers clarity. The first sentence in the original Prop 5 offered confusion about what right was being protected. We restructured the proposal to keep the protections offered narrow. The phrase “as protected by this Constitution” was also confusing and it is removed in the amendment that appears in the calendar.

“We recommend to the Senate that the amendment being offered receive a “yes” vote.

“The final proposal is based on Supreme Court jurisprudence. Legislative Council ensured that it clearly articulates a fundamental right to personal reproductive autonomy. As with other fundamental rights, any restriction on the right must survive strict scrutiny analysis to be deemed constitutional.

“The proposal for Article 22 of the Constitution is deliberately narrow in scope to articulate a fundamental right to personal reproductive autonomy, a right that is central to the liberty to determine one’s own life course, and one that cannot be denied or infringed unless justified by a compelling state interest achieved by the least restrictive means.

“This is the same standard of review the U.S. Supreme Court used in the Roe v Wade decision. It also reflects Vermont’s history and values. Vermonters value the liberty and dignity to determine our own life’s course. We encourage educational, economic, and social mobility for women and men. Having reproductive liberty without government intrusion is fundamental to achieving one’s goals. Determining when one has a family is key to determining the outcome of one’s life.

“Reproductive liberty was and continues to be a lightning rod for attention.

“Reproductive liberty is currently recognized as a fundamental right at the federal level but only through court cases / decisions. It is time to put the question to the voters. The lack of a definitive enumeration of reproductive liberty in VT’s Constitution, the threat of Roe v Wade being overturned by a very conservative US Supreme Court, and the cloud of a multi state initiative to pass restrictive /punitive laws all build a strong case for Prop 5 to go to the voters.

“For nearly 50 years Vermonters have relied on the protections offered by Supreme Court case law to support how we value personal autonomy in

reproductive health decisions. If Vermonters affirm those values by voting yes, Proposition 5 will place those values into the VT Constitution.

“The substitute amendment I am presenting on behalf of the Committee requires a majority vote of the Senate.

“The Committee asks that you vote yes on this and on the final proposal.

“As you can see in the calendar on page 1034, Process for a Constitutional Amendment, the vote for the Proposal once amended requires 2/3 of the Senate to vote yes to approve sending the proposal to the House. After the House votes by a majority of its members, the proposal will wait until the next biennium to be acted on again in both the House and Senate. Your vote today sends Prop 5 to the House and ultimately to the voters in Nov. 2022.

“I’d like to thank the Health and Welfare Committee, who deliberated carefully and paid thoughtful attention to the proposal. The Committee built the language in the proposal so as to be legally defensible – to establish a fundamental Constitutional right of reproductive liberty.

“Brynn – We are fortunate to have a Constitutional scholar who provided guidance and support as we developed this important proposal. She listened to the committee as we pondered the health and welfare of people and the right to reproductive liberty in our Constitution.

“I’d like to thank many of my fellow Senators for the help and information they provided during the process. I’d like to especially thank Senator Benning and Senator Sirotkin.”

Thereupon, the pending question, Shall the Senate adopt the 5th Proposal of Amendment to the Constitution of Vermont (as amended) as recommended by the Committee on Health and Welfare and request the concurrence of the House? was decided in the affirmative on a roll call, pursuant to the Vermont Constitution and Rule 80, Yeas 28, Nays 2 (the necessary two-thirds vote having been attained).

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Benning, Bray, Brock, Campion, Clarkson, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

Those Senators who voted in the negative were: Collamore, McNeil.

Adjournment

On motion of Senator Ashe, the Senate adjourned until eleven o’clock and thirty minutes in the morning.