

Journal of the Senate

Of the

STATE OF VERMONT

SPECIAL SESSION, 2021

MONDAY, NOVEMBER 22, 2021

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Roll Call

The roll of the Senate was thereupon called by the Secretary, John H. Bloomer, Jr., and it appeared that the following Senators were present.

Addison District	Senator Christopher A. Bray Senator Ruth Ellen Hardy
Bennington District	Senator Brian A. Campion
Caledonia District	Senator Joseph C. Benning
Chittenden District	Senator Philip E. Baruth Senator Thomas I. Chittenden Senator Kesha Ram Hinsdale Senator Virginia V. Lyons Senator Christopher A. Pearson Senator Michael D. Sirotkin
Essex-Orleans District	Senator Russell H. Ingalls Senator Robert A. Starr
Franklin District	Senator Randolph D. Brock Senator Corey. J. Parent
Grand Isle District	Senator Richard T. Mazza

Lamoille District	Senator Richard A. Westman
Orange District	Senator Mark A. MacDonald
Rutland District	Senator Brian P. Collamore Senator Cheryl Mazzariello Hooker
Washington District	Senator Ann E. Cummings Senator Andrew J. Perchlik Senator Anthony Pollina
Windham District	Senator Rebecca A. Balint Senator Jeanette K. White
Windsor District	Senator Alison Clarkson Senator Richard J. McCormack Senator Alice W. Nitka

Governor's Proclamation

“PROCLAMATION

CALL FOR A SPECIAL SESSION OF THE VERMONT GENERAL ASSEMBLY

I, Philip B. Scott, Governor of the State of Vermont, by virtue of the authority vested in me by the Constitution, find it necessary to call together the Vermont General Assembly, and I do hereby summon the members of the Senate and House of Representatives to meet in their respective chambers in the State House, together with the officers of the two Houses, on Monday, the 22nd day of November, A.D., 2021, at 10:00 in the forenoon, for the limited purpose of passing legislation to allow, but not require, each municipality to adopt, by action of the municipality’s governing body, a mask mandate beginning Monday, November 29, 2021, or upon passage, whichever is earlier, and as further specified in my letter dated November 15, 2021 to the President Pro Tempore of the Senate and the Speaker of the House, attached hereto.

WITNESS my name hereunto subscribed and the Great Seal of the State of Vermont hereunto affixed at Montpelier this 17th day of November, A.D., 2021.

/s/Philip B. Scott
Governor

By the Governor:
/s/Brittney L. Wilson
Secretary of Civil and Military Affairs”

“November 15, 2021

The Honorable Becca Balint, Senate President Pro Tempore
The Honorable Jill Krowinski, Speaker of the House
115 State Street
Montpelier, VT 05633

Dear President Pro Tempore Balint and Speaker Krowinski:

Thank you for finding time to meet this afternoon.

As you know, I believe the Executive’s emergency authority should be used judiciously. These powers must be reserved for significant emergencies. As a democratic constitutional republic, our constitution clearly intends to balance the power of government, so no one branch, official, or group of officials, is in a position of absolute power. Abuse of emergency powers – or lowering expectations of when and how they might be used – is a dangerous and slippery slope we must not allow and should never be politicized.

There is no doubt that COVID-19 continues to be a persistent challenge. We will be dealing with periodic surges and clusters as we navigate the path from pandemic to endemic. As Dr. Levine has noted, eventually it will become just another virus like seasonal flu or the common cold. But we must continue to do our part as individuals and community members to move forward on this path by getting vaccinated, receiving boosters, and protecting the elderly Vermonters who are most at risk.

As you know, because of vaccine effectiveness, boosters and advancing treatments, case fatality and case hospitalization rates are declining. In fact, even in this period of high case counts, over the last 30 days rates in the over 65 age bands (those most at risk of hospitalization) have declined by 2.5 percent. In addition, with nearly two years of experience, knowledge of the virus and its risks have increased substantially. Thankfully, while it is a challenge, and we must remain vigilant and encourage the unvaccinated to do their part, it no longer rises to the level of an emergency that would justify use of emergency powers.

As President Biden has frequently noted, this is now a pandemic of the unvaccinated. And I believe confrontations over mandates, and the partisan politicization of these issues, ultimately delay the decisions we need these individuals to reach. As such, I do not believe a mask mandate will have the impact you hope at this time. Based on our earlier experience with a mandate, we are unlikely to see compliance among the unvaccinated adults we need to mask, and in the places where we need more people to mask – like in social gatherings where food and alcohol is involved.

To put it more bluntly, the people, businesses and communities who comply with guidance – or who welcome mandates – are not where we need the greatest change; politicized conflict only makes it more difficult to persuade those who we need to reach. However, during this period of elevated cases I will continue to strongly encourage these Vermonters to wear masks indoors when around others from outside their household, get vaccinated and make good choices on a day-to-day basis.

In light of your recent press releases, it's obvious we have differences of opinion regarding how best to move forward from pandemic to endemic and use of gubernatorial emergency powers.

For these reasons, I propose a special session of the General Assembly for the single purpose of expressly granting each individual municipality the narrowly crafted, and time-limited, authority to mandate the use of facial coverings indoors within their jurisdictions.

Specifically, I'm willing to support legislation that is clearly and narrowly crafted to do the following:

First, the legislation must be limited to facial covering requirements indoors within a municipality's jurisdiction (except schools, which shall remain governed by the policies set forth by the local school board) for the specific, and exclusive, purpose of addressing COVID-19.

Second, the legislation must allow each municipality to enact, by action of the municipality's governing body, a mask mandate beginning Monday, November 29, 2021, or upon passage, whichever is earlier.

Third, the legislation and authority to impose a local mask mandate shall sunset on April 30, 2022.

Fourth, the statute passed in special session must require the governing body of the municipality to reevaluate and vote to extend or rescind the policy on a month-to-month basis.

I offer this as a compromise – not because I believe mandates are the right approach under current circumstances. Therefore, I want to be very clear, should the Legislature propose any additional restrictions or mandates on a statewide or municipal basis, I will not support them. This special session would be for the exclusive purpose of passing narrowly crafted, and time-limited legislation giving municipalities the temporary authority to mandate the use of facial coverings indoors within their jurisdictions, as outlined above.

I have asked my staff to prepare the paperwork calling a special session for Monday, November 22, 2021, and look forward to discussing this compromise proposal when we meet later today.

Sincerely,
/s/Philip B. Scott
Governor

PBS/kp”

Senate Resolutions Adopted

Senate resolutions of the following titles were severally offered, read and adopted, and are as follows:

By Senator Balint,

S.R. 1. Senate resolution relating to adoption of rules to govern the Special Session of 2021.

Resolved by the Senate:

That during the Special Session of 2021 commencing on November 22, 2021, by call of the Governor issued on November 17, 2021, the Senate does hereby adopt as its rules for this Special Session, the rules as previously adopted for the 2021 regular session except for Rules 39, 41, and 100, with the following additions thereto:

Rule 33A. Bills and joint resolutions to be placed on the Calendar for notice and subsequent action shall comprise solely those bills and resolutions consisting of matters introduced during the Special Session; upon adjournment *sine die* of the Special Session all such matters contained in these new bills and resolutions not enacted into law shall terminate automatically and be of no further force and effect.

Rule 39A. All House bills shall be referred to the Committee on Rules, which may report any bills referred to it for reference to another Committee of jurisdiction pursuant to Senate Rule 24.

Rule 100A. Joint rules adopted during the 2021 regular session by the legislature shall be in full force and effect during this Special Session.

By Senator Balint,

S.R. 2. Senate resolution relating to appointment of a Committee to inform the Governor of the organization of the Senate.

Resolved by the Senate:

That a Committee of two Senators be appointed to wait upon His Excellency, the Governor, and inform him that the Senate has organized and is ready on its part to proceed with the business of the Special Session

By Senator Balint,

S.R. 3. Senate resolution relating to informing the House of the organization of the Senate.

Resolved by the Senate:

That the Secretary be directed to inform the House of Representatives that a quorum of the Senate has assembled and is ready on its part to proceed with the business of the Special Session.

Committee Appointed

Pursuant to the provisions of S.R. 2, the President appointed a Committee to wait upon His Excellency, the Governor, to inform him that the Senate is ready on its part to proceed with the business of the session:

Senator Clarkson

Senator Brock

Report of Committee

Senator Clarkson, of Windham District, for the Committee appointed to wait upon His Excellency, the Governor, to inform him that the Senate is ready on its part to proceed with the business of the session, appeared at the bar of the Senate and reported that it had performed the duties assigned to it.

Rules Suspended; Senate Resolution Adopted on the Part of the Senate

S.R. 4.

On motion of Senator Balint, the rules were suspended and Senate resolution entitled:

Senate resolution urging Governor Philip Scott to use all possible public health measures to reduce the number of COVID-19 cases and associated deaths and maximize vaccination rates among all eligible population groups.

Was taken up for immediate consideration on a division of the Senate, Yeas 21, Nays 6.

Thereupon, the resolution was offered and read as follows:

By Senators Balint, Baruth, Bray, Champion, Clarkson, Hardy, Hinsdale, Hooker, Lyons, MacDonald, McCormack, Pearson, Perchlik and Pollina,

S.R. 4. Senate resolution urging Governor Philip Scott to use all possible public health measures to reduce the number of COVID-19 cases and associated deaths and maximize vaccination rates among all eligible population groups.

Whereas, within days of the first detected COVID-19 cases in Vermont, Governor Scott issued Executive Order No. 01-20, “Declaration of State of Emergency in Response to COVID-19 and National Guard Call-Out,” initiating a series of actions across Vermont to reduce the spread of the disease, and

Whereas, since the start of the pandemic, Governor Scott has continuously stressed that Vermont’s response to COVID-19 is based on data and science, and

Whereas, on July 24, 2020, Governor Scott issued Addendum 2 to Amended and Restated Executive Order No. 01-20, mandating that face masks be worn in all indoor and outdoor public places whenever close contact with others was unavoidable; on April 30, 2021, the Governor issued Addendum 15 to Amended and Restated Executive Order No. 01-20, rescinding the portion of the mask mandate applicable to outdoor public spaces; on May 14, 2021, the Governor issued Addendum 16 to Amended and Restated Executive Order No. 01-20, rescinding the indoor face mask requirement for vaccinated individuals; and on June 15, 2021, the Governor issued Executive Order No. 06-21, marking the end of the state of emergency and addressing “Post Emergency Recovery Activities,” and

Whereas, the Centers for Disease Control and Prevention and the findings of numerous studies indicate that wearing a mask is effective in reducing the spread of COVID-19, both by reducing the emission of virus-laden droplets by symptomatic, asymptomatic, and presymptomatic individuals and by reducing the likelihood that a wearer will inhale infected droplets, and

Whereas, the far more transmittable Delta variant is now driving the surge in COVID-19 cases, hospitalizations, and deaths in Vermont and around the globe, and

Whereas, despite Vermont consistently having one of the highest vaccination rates in the United States, the State now also has one of the highest per capita rates of COVID-19 infection; as of November 19, 2021, the daily average number of new COVID-19 cases in Vermont had increased 45 percent over the prior 14 days to 352; on November 11, 2021, a record 591 cases were reported; and recently, the testing positivity rate has been in excess of four percent, and

Whereas, on October 25, 2021, the Centers for Disease Control and Prevention updated its masking guideline, recommending to fully vaccinated individuals that “to maximize protection from the Delta variant and prevent possibly spreading it to others, wear a mask indoors in public if you are in an area of substantial or high transmission,” and

Whereas, as of November 19, 2021, the Centers for Disease Control and Prevention identified the entire State of Vermont as an area of high transmission, and

Whereas, pursuant to 20 V.S.A. § 9, the Governor is authorized to declare a state of emergency in response to an all-hazards event, including a health or disease-related emergency, “that causes or may cause substantial damage or injury to persons or property within the State,” and

Whereas, the COVID-19 crisis in Vermont has dramatically worsened and more effective State government responses, similar in scope to those implemented during 2020, must be adopted without delay, *therefore be it*

Resolved by the Senate:

That the Senate of the State of Vermont urges Governor Philip Scott to use all possible public health measures to reduce the number of COVID-19 cases and associated deaths and maximize vaccination rates among all eligible population groups, *and be it further*

Resolved: That the Senate of the State of Vermont urges Governor Philip Scott to increase testing capacity throughout the State, *and be it further*

Resolved: That the Senate of the State of Vermont urges Governor Philip Scott to expand access to free or low-cost rapid testing options, *and be it further*

Resolved: That the Senate of the State of Vermont urges Governor Philip Scott to provide stronger guidance and support for schools and health care providers, *and be it further*

Resolved: That the Senate of the State of Vermont urges Governor Philip Scott to direct the Department of Health to post on its website, and update daily, the COVID-19 case rate for each town and the degree of community transmission in each county using the Centers for Disease Control and Prevention guidelines and to make the information readily available on the Department’s COVID-19 dashboard and easy to navigate, *and be it further*

Resolved: That the Senate of the State of Vermont urges Governor Philip Scott to declare a state of emergency based on the high rates of community transmission of COVID-19 in this State to be followed by a statewide indoor masking requirement, *and be it further*

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to Governor Philip Scott.

Thereupon, the question, Shall the Senate adopt the resolution was agreed to on a roll call, Yeas 18, Nays 9.

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: Balint, Baruth, Bray, Champion, Clarkson, Cummings, Hardy, Hinsdale, Hooker, Lyons, MacDonald, McCormack, Pearson, Perchlik, Pollina, Sirotkin, Starr, White.

Those Senators who voted in the negative were: Benning, Brock, Chittenden, Collamore, Ingalls, Mazza, Nitka, Parent, Westman.

Those Senators absent and not voting were: Kitchel, Sears, Terenzini.

Bill Introduced; Rules Suspended; Third Reading Ordered, Rules Suspended; Bill Passed; Bill Messaged

S. 1.

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

By Senator White,

An act relating to temporary municipal rules in response to COVID-19.

Thereupon, on motion of Senator Balint, the rules were suspended and the bill was taken up for immediate consideration.

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

Thereupon, on motion on Senator Balint the rules were suspended and the bill was placed in all remaining stages of passage.

Thereupon, pending third reading, Senator White moved to amend the bill in Sec. 1, municipal regulatory authority; temporary authority to adopt rules requiring face coverings, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) A rule adopted pursuant to this section shall remain in effect for not more than 45 days following its initial adoption. The legislative body of a municipality that adopted a rule pursuant to this section shall meet during the period in which the initial rule is in effect and vote either to rescind the rule or to extend the rule for an additional 30 days. Thereafter, the legislative body shall meet at a minimum once every 30 days to reconsider the rule, at which meeting the legislative body shall vote either to rescind the rule or to extend the rule for an additional 30-day period.

Which was agreed to.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 17, Nays 10.

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: Balint, Baruth, Bray, Champion, Chittenden, Clarkson, Cummings, Hardy, Hinsdale, Hooker, Lyons, McCormack, Nitka, Pearson, Sirotkin, Starr, White.

Those Senators who voted in the negative were: Benning, Brock, Collamore, Ingalls, MacDonald, Mazza, Parent, *Perchlik, Pollina, Westman.

Those Senators absent and not voting were: Kitchel, Sears, Terenzini.

*Senator Perchlik explained his vote as follows:

“Thank you Madam President.

“I wanted to explain my vote for two reasons.

“First, I want to be clear that my no vote was not about the efficacy of masks or the appropriateness of mandates. We should follow the CDC and VT Department of Health guidance for mitigation measures.

“Second, I believe this bill is poor governance and a potentially dangerous precedent For future governance decisions.

“It is bad governance because, without our normal legislative process, we are pushing a responsibility from the Dept. of Health and the Executive Branch (where I think the responsibility belongs) up-stream to our small select-boards and city councils.

“It is a worrying precedent in that we are pushing this responsibility to the towns for the purpose of unnecessarily relieving the Governor of his current responsibility to make a decision, as I understand it, simply because he does not want to.”

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

Joint Senate Resolution Adopted on the Part of the Senate; Rules Suspended; Joint Resolution Messaged

J.R.S. 1.

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Balint,

J.R.S. 1. Joint resolution relating to final adjournment.

Resolved by the Senate and House of Representatives:

That the President of the Senate and the Speaker of the House of Representatives adjourn their respective Houses *sine die* on the twenty-second day of November, 2021.

Thereupon, on motion of Senator Balint, the rules were suspended and the joint resolution was ordered messaged to the House forthwith.

Message from the House No. 1

Special Session

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

Madam President:

I am directed to inform the Senate that:

A quorum of the House has assembled and is ready on its part to proceed with the business of the Special Session.

Secretary Directed to Inform the House of Completion of Business

On motion of Senator Balint, the Secretary was directed to inform the House that the Senate has completed the business of the Special Session and is ready to adjourn pursuant to the provisions of J.R.S. 1.

Committee Appointed to Inform Governor of Completion of Business

On motion of Senator Balint, the President appointed the following two Senators as members of a committee to wait upon His Excellency, Philip B. Scott, the Governor, and inform him that the Senate has completed the business of the Special Session and is ready to adjourn pursuant to the provisions of J.R.S. 1:

Senator Clarkson

Senator Brock

Report of Committee

The Committee appointed to wait upon His Excellency, the Governor, to inform him that the Senate had, on its part, completed the business of the Special Session and was ready to adjourn pursuant to the provisions of **J.R.S. 1**, performed the duties assigned to it.

Final Adjournment

On motion of Senator Balint, at twelve o'clock and fifty minutes in the afternoon, the Senate adjourned *sine die*, pursuant to the provisions of **J.R.S. 1.**