

Journal of the Senate

FRIDAY, APRIL 9, 2021

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 48

A message was received from the House of Representatives by Ms. Alona Tate, its Second Assistant Clerk, as follows:

Madam President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 157. An act relating to registration of construction contractors.

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

The House has considered a bill originating in the Senate of the following title:

S. 18. An act relating to limiting earned good time sentence reductions for offenders convicted of certain crimes.

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

Message from the House No. 49

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:

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 35. House concurrent resolution honoring Fagan Hart for her admirable leadership of the Vermont Children's Trust Foundation.

H.C.R. 36. House concurrent resolution honoring Ludy Biddle for her outstanding leadership at NeighborWorks of Western Vermont.

H.C.R. 37. House concurrent resolution honoring Westfield Selectboard Chair extraordinaire Yves Daigle.

H.C.R. 38. House concurrent resolution honoring the musical achievements of Vermont Symphony Orchestra Music Director Jaime Laredo.

H.C.R. 39. House concurrent resolution congratulating the 2021 Essex High School Hornets Vermont-NEA Scholars' Bowl State championship team.

H.C.R. 40. House concurrent resolution congratulating Fatima Khan on earning a finalist ranking in U.S. Senator Bernie Sanders's 2021 State of the Union Essay Contest.

H.C.R. 41. House concurrent resolution honoring former Brattleboro Fire Chief Michael Bucossi for his outstanding leadership and community service.

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

The Governor has informed the House that on April 9, 2021, he did not approve and allowed to become law without his signature a bill originating in the House of the following title:

H. 81. An act relating to statewide public school employee health benefits.

Text of Communication from Governor

The text of the communication to the House from His Excellency, the Governor, setting forth his reasons for refusing to sign and *allowing to become law without his signature*, **Bill No. H. 81**, is as follows:

“April 8, 2021

The Honorable BetsyAnn Wrask
Clerk of the Vermont House of Representatives
115 State Street
Montpelier, VT 05633

Dear Ms. Wrask:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, H.81, *An act relating to statewide public school employee health benefits*, will become law without my signature for the reasons stated herein.

In late June 2018, as the Administration debated the state budget with the Legislature, which ultimately became Act 11 of 2018 (Special Session), the Senate Education Committee added language creating a statewide school employee health care bargaining structure without testimony from my Administration. The Legislature nevertheless included it in the budget, which went into law without my signature. It has since resulted in school employee health care plans that are outpacing premium growth of health care exchange

plans and significantly outpacing grand list growth, which is the primary revenue source for school district budgets.

I agree that changes to the bargaining structure established in Act 11 should be made, specifically when it comes to impasse proceedings and establishing reasonable cost containment principles. This was made clear in the first negotiation held by the Act 11 Commission on Public School Employee Benefits (“Commission”), which was not a transparent process. It ended, predictably, in an impasse between both parties that was settled by a single arbitrator from outside Vermont who is entirely unaccountable to Vermont taxpayers.

The arbitrator’s award, which was not explained to the people of Vermont or elected officials, has had a major impact on school district budgets, and therefore on property tax bills. It has been estimated the initial contract added \$25 to \$30 million in costs onto already overburdened taxpayers. Make no mistake, this bargaining construct, the rules governing it, and the costly and unsustainable outcomes it has produced are a product of how the Legislature ultimately chose to move forward on this issue in 2018.

H.81 does make some very small, positive changes, including the requirement for the parties to include a cost estimate with their proposals and a requirement for the arbitrator to fully explain the basis for the final award. There are also technical changes I support, including clarification of employee definition, more flexibility for removal of Commissioners by the appointing authority, and timelines for getting data to the Commission.

Unfortunately, H.81 does not adequately address cost containment. To the contrary, it puts taxpayers on the hook for still higher costs by removing uniform cost-sharing arrangements for premiums and out-of-pocket costs. The Commission now has the opportunity to begin negotiating a sliding health care contribution. Given the potential benefit to lower paid unlicensed employees, I am not opposed to this concept. However, I’m concerned that if higher paid teachers and administrators – who on their own earn 50 percent more than the average Vermont household - do not offset the cost through higher health benefit contributions, then taxpayers are, yet again, left making up the added cost.

It is important to know that the Legislature’s Joint Fiscal Office (JFO) testified that employees who do not pay much for health care are likely to use more of it, driving up premiums for all participants. The JFO noted the public school employee plans are more generous than most and premium increases have surpassed increases in the cost of care and enrollment. The JFO warned legislative committee members that to add this flexibility in bargaining could increase the incentive to use more services because the user pays so little.

The JFO also estimated school employee health care premium costs of about \$311 million in Fiscal Year 2024. This means any 1 percentage point shift in the premium share of all participating employees represents \$3.1 million. If the premium share for all participating employees shifted down 1 percentage point, employees would pay \$3.1 million less and employers (the taxpayers) would pay \$3.1 million more. If only non-licensed employees negotiated a 1 percentage point change in the premium share, the shift would be about \$1 million.

As these costs go up in school budgets, it can lead to less money available for student programming and other student enrichment activities. I continue to be concerned that more and more funding is being diverted away from students and into operational overhead – even as the number of students in our schools has declined. This deepens the educational inequality that exists from district to district, because many districts cannot absorb the cost without cuts to educational options for our children. If we want to give every student access to the best education in America and make Vermont a more affordable and prosperous place to live and work, we have to break this cycle.

To avoid this additional tax burden on Vermonters and reverse the growing inequality in our schools, I call on the General Assembly to make the following additional changes to H.81 before it adjourns for this session of the biennium:

- Include a provision that would limit the employer's total health care benefit contributions to 80%. The employees themselves would determine the cost share among those higher paid licensed teachers and administrators and lower paid unlicensed school employees. In this way, the system becomes more progressive as higher paid employees alleviate the burden of costly health care plans on their lower paid unlicensed colleagues. The cost would not shift to taxpayers who cannot afford higher property taxes to pay for even more generous health care plans for public school employees at the expense of options for their children.
- Make the effective date for all sections of the bill a uniform date to improve bargaining procedures in 2021.
- Considering the fiscal note presented by the JFO showed clear financial consequences to taxpayers, I ask for these fiscal impacts to be reviewed by the House Ways & Means and Senate Finance Committees and additional modeling on future impacts to taxpayers be presented to the public.

This is the single biggest self-insured group in the state of Vermont, and it is publicly funded. This is very important work. As Vermonters continue to

recover from an unprecedented pandemic, we must be very sensitive to – and transparent about - laws that are likely to lead to increased taxes and fees, such as this one.

Sincerely,

/s/Philip B. Scott

Philip B. Scott

Governor

PBS/kp”

Message from the Governor
Appointments Referred

A message was received from the Governor, by Brittney L. Wilson, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

The nomination of

Coen, David of Shelburne - Chair, Transportation Board - from February 24, 2021 to February 28, 2024.

To the Committee on Transportation.

The nomination of

Bailey, Richard of Hyde Park - Member, Transportation Board - from February 24, 2021 to February 28, 2024.

To the Committee on Transportation.

The nomination of

Hayward, Timothy of Middlesex - Member, Transportation Board - from February 24, 2021 to February 28, 2023.

To the Committee on Transportation.

The nomination of

Ainsworth, Mary Jane of Barre - Director, Parole Board - from February 24, 2021 to February 29, 2024.

To the Committee on Institutions.

The nomination of

Boucher, Patricia of Enosburg Falls - Member, Parole Board - from February 24, 2021 to February 29, 2024.

To the Committee on Institutions.

The nomination of

Stephens, Mary L. of Goshen - Member, Parole Board - from February 24, 2021 to February 29, 2024.

To the Committee on Institutions.

The nomination of

Collier, Anthony of Colchester - Member, Vermont Economic Development Authority - from February 24, 2021 to June 30, 2026.

To the Committee on Finance.

The nomination of

Tuttle, Mike of South Burlington - Member, Vermont Economic Development Authority - from February 24, 2021 to June 30, 2026.

To the Committee on Finance.

The nomination of

Voigt, Steven of Norwich - Member, Vermont Economic Development Authority - from February 24, 2021 to June 30, 2026.

To the Committee on Finance.

The nomination of

Davis, Clarence of Shelburne - Member, Vermont Housing and Conservation Board - from March 15, 2021 to January 31, 2023.

To the Committee on Economic Development, Housing and General Affairs.

The nomination of

Keane, Michael of North Bennington - Member, Vermont Economic Progress Council - from April 1, 2021 to March 31, 2025.

To the Committee on Economic Development, Housing and General Affairs.

The nomination of

Smith, Rachel of St. Albans - Member, Vermont Economic Progress Council - from April 1, 2021 to March 31, 2025.

To the Committee on Economic Development, Housing and General Affairs.

The nomination of

Nicholson, Mark of Barre - Member, Vermont Economic Progress Council - from April 1, 2021 to March 31, 2025.

To the Committee on Economic Development, Housing and General Affairs.

The nomination of

Tester, Shawn of St. Johnsbury - Member, Vermont State Colleges Board of Trustees - from March 15, 2021 to March 1, 2025.

To the Committee on Education.

The nomination of

McKenzie, Mary Alice of Colchester - Director, Vermont Municipal Bond Bank - from February 24, 2021 to January 31, 2023.

To the Committee on Finance.

The nomination of

Coates, David of Colchester - Member, Vermont Municipal Bond Bank - from February 24, 2021 to January 31, 2023.

To the Committee on Finance.

The nomination of

Avila, Maria Mercedes of Burlington - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

Berry, Stuart of Belmont - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

Davenport, Amy of Montpelier - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

Dorfman, Dorinne of Waterbury Center - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

Hutchins, Donn of Dorset - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

O'Day, Katherine of White River Jct. - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

Lovejoy, Brittany of Enosburg Falls - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

Pinkham, Kreig of Northfield - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

Sparks, Henri of Colchester - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

Vastine, Karen of Burlington - Member, Children and Family Council for Prevention Programs - from March 1, 2021 to February 28, 2024.

To the Committee on Health and Welfare.

The nomination of

Harris, Kyle of Montpelier - Member, Cannabis Control Board - from April 2, 2021 to February 28, 2022.

To the Committee on Government Operations.

The nomination of

Hulburd, Julie of Colchester - Member, Cannabis Control Board - from April 2, 2021 to February 28, 2023.

To the Committee on Government Operations.

The nomination of

Pepper, James of Montpelier - Chair, Cannabis Control Board - from April 2, 2021 to February 29, 2024.

To the Committee on Government Operations.

Bills Referred

Pursuant to Temporary Rule 44A the following bills having failed to meet cross-over and being released by the Committee on Rules are hereby referred to their respective committees of jurisdictions:

H. 227. An act relating to approval of amendments to the charter of the City of Winooski.

To the Committee on Government Operations.

H. 437. An act relating to changes that affect the revenue of the State.

To the Committee on Finance.

Bill Referred to Committee on Rules

S. 99.

Senate bill of the following title, appearing on the Calendar for notice, under Temporary Rule 44A, was referred to the Committee on Rules:

An act relating to repealing the statute of limitations for civil actions based on childhood physical abuse.

Senate Resolution Placed on Calendar

S.R. 9.

Senate resolution of the following title was offered, read the first time and is as follows:

By the Committee on Rules,

S.R. 9. Senate resolution relating to extending concurrently conducted electronic sessions and committee meetings.

Whereas, it is critical to take steps to control outbreaks of COVID-19 to minimize the risk to the public, maintain the health and safety of Vermonters and limit the spread of infection in our community;

Whereas, the Governor of the State of Vermont issued a Declaration of State of Emergency in Response to COVID-19;

Whereas, Permanent Senate Rule 9A permits the Rules Committee to authorize sessions of the Senate during a declared emergency be concurrently conducted electronically; and

Whereas, Permanent Senate Rule 32A permits the Rules Committee to authorize committee meetings during a declared emergency be concurrently conducted electronically; and

Whereas, Governor Phillip B. Scott declared state of emergency currently expires at midnight on April 15, 2021;

Whereas, it may be necessary for sessions of the Senate and committees of the Senate to continue with concurrently conducted electronic sessions and committee meetings subsequent to the expiration of the Governor's declared emergency; *now therefore be it*

Resolved by the Senate:

Notwithstanding the language in Permanent Senate Rules 9A and 32A regarding their applicability during Declarations of Emergency, the provisions of Permanent Senate Rules 9A and 32A regarding Senate sessions and committee meetings shall remain in effect until the later of: (1) the termination of the Governor's Declaration of State of Emergency in Response to COVID-19 or January 7, 2022.

Thereupon, under Rule 34, the resolution was placed on the Calendar for notice.

Bill Referred

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

H. 157.

An act relating to registration of construction contractors.

To the Committee on Rules.

Appointment of Senate Members to Joint Legislative Child Protection Oversight Committee

Pursuant to the provisions of Sec. 23 (b)(2) of No. 60 of the Acts of 2015, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Legislative Child Protection Oversight Committee for the current biennium:

Senator Lyons
Senator Sears
Senator Westman

**Appointment of Senate Members to the Vermont Citizens Advisory
Committee on Lake Champlain's Future**

Pursuant to the provisions of 10 V.S.A. §1960, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Committee on Lake Champlain's Future for the current biennium:

Senator Bray
Senator Brock

**Appointment of Senate Members to the Joint Information Technology
Oversight Committee**

Pursuant to the provisions of 2 V.S.A. § 614(b)(2), the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Information Technology Oversight Committee during this biennium:

Senator Brock
Senator Pearson
Senator Chittenden

Appointment of Senate Members to Health Reform Oversight Committee

Pursuant to the provisions of 2 V.S.A. § 691(2)(4)(6)(8), the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Health Reform Oversight Committee:

Senator Kitchel
Senator Cummings
Senator Lyons
Senator Westman

**Appointment of Senate Members to the Joint Legislative Justice
Oversight Committee**

Pursuant to the provisions of 2 V.S.A. § 801, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Legislative Justice Oversight Committee for terms of two years:

Senator Sears
Senator Baruth
Senator Lyons
Senator Parent
Senator Hooker

Standing Committee Realigned

The President, on behalf of the Committee on Committees, reported a new appointment to a standing committee, resulting in a realignment of the committee, as follows:

Sexual Harassment Panel

At Call

Senator Hardy, Chair
 Benning, Vice-Chair
 [Clarkson]
Lyons
 Perchlik
 Parent
 Ram

Proposed Amendment to the Constitution Concurred In

Proposed Amendment to the Constitution designated as Proposal 2 having appeared on the Calendar for seven legislative days pursuant to Rule 83,

Was taken up.

Thereupon, Proposal 2 was read the third time and is as follows:

PROPOSAL 2

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to clarify that slavery and indentured servitude in any form are prohibited.

Sec. 2. Article 1 of Chapter I of the Vermont Constitution is amended to read:

Article 1. [All persons born free; their natural rights; slavery and indentured servitude prohibited]

That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore ~~no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like~~ slavery and indentured servitude in any form are prohibited.

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.

Thereupon, the pending question, Shall the Senate concur in the adoption by the preceding General Assembly of Proposal 2 for the amendment of the Constitution of the State of Vermont, and request the concurrence of the House? was decided in the affirmative on roll call pursuant to Rule 83, Yeas, 29, Nays 1 (the necessary majority vote having been attained).

Roll Call

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

The Senator who voted in the negative was: McCormack.

Proposed Amendment to the Constitution Concurred In

Proposed Amendment to the Constitution designated as Proposal 5 having appeared on the Calendar for seven legislative days pursuant to Rule 83,

Was taken up.

Thereupon, Proposal 5 was read the third time and is as follows:

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 an individual's right to personal reproductive autonomy is central to the liberty and dignity to determine one's own life course 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.

Thereupon, the pending question, Shall the Senate concur in the adoption by the preceding General Assembly of Proposal 5 for the amendment of the Constitution of the State of Vermont, and request the concurrence of the House? was decided in the affirmative on roll call pursuant to Rule 83, Yeas, 26, Nays 4 (the necessary majority vote having been attained).

Roll Call

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

Those Senators who voted in the negative were: Collamore, Ingalls, Starr, Terenzini.

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were severally adopted in concurrence:

By Rep. Brumsted,

H.C.R. 35.

House concurrent resolution honoring Fagan Hart for her admirable leadership of the Vermont Children's Trust Foundation.

By Reps. Shaw and others,

By Senators Collamore, Hooker and Terenzini,

H.C.R. 36.

House concurrent resolution honoring Ludy Biddle for her outstanding leadership at NeighborWorks of Western Vermont.

By Reps. Higley and Smith,

H.C.R. 37.

House concurrent resolution honoring Westfield Selectboard Chair extraordinaire Yves Daigle.

By Rep. Coffey,

H.C.R. 38.

House concurrent resolution honoring the musical achievements of Vermont Symphony Orchestra Music Director Jaime Laredo.

By Reps. Dolan and others,

By Senators Ingalls and Starr,

H.C.R. 39.

House concurrent resolution congratulating the 2021 Essex High School Hornets Vermont-NEA Scholars' Bowl State championship team.

By Reps. Black and others,

H.C.R. 40.

House concurrent resolution congratulating Fatima Khan on earning a finalist ranking in U.S. Senator Bernie Sanders's 2021 State of the Union Essay Contest.

By Reps. Burke and others,

By Senators Balint and White,

H.C.R. 41.

House concurrent resolution honoring former Brattleboro Fire Chief Michael Bucossi for his outstanding leadership and community service.

Adjournment

On motion of Senator Balint, the Senate adjourned, to reconvene on Tuesday, April 13, 2021, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 22.