

Journal of the Senate

TUESDAY, APRIL 20, 2021

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Taihaku of East Calais.

Pledge of Allegiance

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

Joint Senate Resolution Adopted on the Part of the Senate

J.R.S. 25.

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. 25. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 23, 2021, it be to meet again no later than Tuesday, April 27, 2021.

Bill Introduced

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

S. 137.

By Senator Baruth,

An act relating to gender balance on the University of Vermont and Vermont State Colleges Boards.

To the Committee on Education.

Third Readings Ordered**H. 195.**

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

An act relating to use of facial recognition technology by law enforcement in cases involving sexual exploitation of children.

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.

H. 366.

Senator Clarkson, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to 2021 technical corrections.

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. 99.**

Senator Baruth, for the Committee on Judiciary, to which was referred Senate bill entitled:

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

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

Sec. 1. 12 V.S.A. § 522 is amended to read:

§ 522. ACTIONS BASED ON CHILDHOOD SEXUAL OR PHYSICAL
ABUSE

(a) A civil action brought by any person for recovery of damages for injury suffered as a result of childhood sexual or physical abuse may be commenced at any time after the act alleged to have caused the injury or condition. The victim need not establish which act in a series of continuing physical abuse or sexual abuse or exploitation incidents caused the injury.

(b) If a complaint is filed alleging an act of childhood sexual or physical abuse, the complaint shall immediately be sealed by the clerk of the court.

The complaint shall remain sealed until the answer is served or, if the defendant files a motion to dismiss under Rule 12(b) of the Vermont Rules of Civil Procedure, until the court rules on that motion. If the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed. Any hearing held in connection with the motion to dismiss shall be in camera.

(c) As used in this section:

(1) ~~“childhood~~ Childhood sexual abuse” means any act committed by the defendant against a complainant who was ~~less than~~ under 18 years of age at the time of the act and which act would have constituted a violation of a statute prohibiting lewd and lascivious conduct, lewd or lascivious conduct with a child, felony sexual exploitation of a minor in violation of 13 V.S.A. § 3258(c), sexual assault, or aggravated sexual assault in effect at the time the act was committed.

(2) “Childhood physical abuse” means any act other than an attempt committed by the defendant against a complainant who was under 18 years of age at the time of the act and which act would have constituted a violation of a statute prohibiting aggravated assault in effect at the time the act was committed.

(d) Notwithstanding 1 V.S.A. § 214, this section shall apply retroactively to childhood sexual abuse that occurred prior to July 1, 2019, irrespective of any statute of limitations in effect at the time the abuse occurred. In an action based on childhood sexual abuse that would have been barred by any statute of limitations in effect on June 30, 2019, damages may be awarded against an entity that employed, supervised, or had responsibility for the person allegedly committing the sexual abuse only if there is a finding of gross negligence on the part of the entity.

(e) Notwithstanding 1 V.S.A. § 214, this section shall apply retroactively to childhood physical abuse that occurred prior to July 1, 2021, irrespective of any statute of limitations in effect at the time the abuse occurred. In an action based on childhood physical abuse that would have been barred by any statute of limitations in effect on June 30, 2021, damages may be awarded against an entity that employed, supervised, or had responsibility for the person allegedly committing the physical abuse only if there is a finding of gross negligence on the part of the entity.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2021.

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 29, Nays 0.

Senator Sears 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, Benning, Bray, Brock, Campion, Chittenden, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingalls, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Perchlik, Pollina, Ram, Sears, Sirotkin, Starr, Terenzini, Westman, White.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Parent.

Proposals of Amendment; Third Reading Ordered

H. 218.

Senator Pollina, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to the sale of unpasteurized raw milk.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1, 6 V.S.A. chapter 152, as follows:

First: In section 2776, subdivision (6), after the words “Required Agricultural Practices that” and before the words “grow, raise, or produce agricultural products” by inserting the words as part of the business of the farm stand or CSA organization

Second: In section 2778, subsection (b), subdivision (1), after the words “Persons selling or” and before the words “unpasteurized milk” by striking out the word “delivery” and inserting in lieu thereof the word delivering

And that the bill ought to pass in concurrence with such proposals of amendment.

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

Joint Resolution Adopted on the Part of the Senate

J.R.S. 24.

Joint Senate resolution entitled:

Joint resolution relating to amending temporary Joint Rule 22A.

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

Message from the House No. 55

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. 175. An act relating to the beverage container redemption system.

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. 53. An act relating to exempting feminine hygiene products from the Vermont Sales and Use Tax.

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

The Governor has informed the House that on April 17, 2021, he did not approve and allowed to become law without his signature a bill originating in the House of the following title:

H. 315. An act relating to COVID-19 relief.

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*, **House Bill No. H. 315**, is as follows:

“April 17, 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.315, *An Act Relating to Covid-19 Relief*, will become law without my signature for the reasons stated herein.

H.315 started as a smart spending bill – about \$62 million in total – to fund urgent pandemic needs, including business recovery grants that were a top priority in the budget adjustment proposal I proposed in January. The need was there in January and is still urgent today.

Over the two months it took the Legislature to pass H.315, it evolved into something much larger and more complex.

To the Legislature's credit, the bill includes some valuable relief for Vermonters, including:

- \$47 million for budget initiatives I put forward, including economic aid to businesses, housing to immediately address emergency needs, brownfield remediation and environmental clean-up and VOREC community grants.
- \$5 million for foreclosure prevention.
- \$7.64 million for mental health services, recovery centers, New Americans, refugees and immigrants, and grants to Reach-Up participants.
- Linking to federal income taxes for tax year 2020, which will exempt the first \$10,200 of unemployment insurance income, as well as Paycheck Protection Program forgiven loan funds.

For these reasons, I'm allowing H.315 to become law.

Unfortunately, I cannot sign this bill because it includes policy and spending choices that suggest we have very different opinions about how best to deploy the federal recovery and economic stimulus funding.

As a result, I want to be clear: I feel *very* strongly that we need to invest federal American Rescue Plan Act (ARPA) money in a truly strategic and fully transparent way, preferably in a single piece of legislation. These investments should be in tangible infrastructure that provide the greatest economic benefits and will truly transform our economy – especially in the parts of the state that need it most. I will not support a piecemeal or diluted approach to the investment of ARPA funds.

We must not squander this unprecedented opportunity to transform the economy of our state. If we work together, we can make historic investments in climate change mitigation, water and sewer infrastructure, universal broad band, housing and more. All these investments, if planned and supported wisely, will be something we can point to as the silver-lining of this pandemic. We must not forgo the opportunity to maximize the benefit of this federal money simply because the federal timing did not align with the

traditional legislative calendar or process. That would be profoundly shortsighted.

Similarly, I also feel strongly that the Legislature should reverse its decision to insert, at the last minute, a new and punitive tax liability on federal PPP loans. These forgivable loans were issued to help employers survive this pandemic and preserve jobs. And our businesses have applied for these loans with the understanding they would not be taxed. In addition, Senator Leahy's office has confirmed that these resources were never intended to be taxed. The Legislature should be at their side, helping them up. Not on their back, trying to raise yet more in taxes.

I encourage the Legislature to take these concerns seriously – as they reflect core priorities that I will want to see reflected in the budget and other legislation as we move toward adjournment.

More specifically, rather than act quickly on H.315 with available state funds and federal Coronavirus Relief Funds – and without allowing for a transparent, tangible and transformative approach to investing \$1 billion in federal American Rescue Plan Act (ARPA) funds – the Legislature chose to hastily deploy \$59 million of ARPA funds unnecessarily. The initiatives in H.315 are not bad investments, but they should not be funded with ARPA money. Again, we owe it to Vermonters to spend the ARPA funds in a transparent way, preferably through a single spending bill, so Vermonters can easily understand the investments and can verify that the Legislature is maximizing the value of every penny to strengthen the economy in every county and every community.

In addition to unnecessarily expending ARPA funds, H.315 also spends about \$4 million in Elementary and Secondary School Emergency Relief (ESSER) funds. Congress explicitly appropriated this money to the Vermont Agency of Education. In H.315, the Legislature added their approval as an additional requirement. This will prevent the Agency from moving quickly to meet the needs of our children. The fact is our kids are not doing okay in the hybrid learning environment and they should not have to wait for the Legislature's appropriations process.

The need for flexibility should be apparent and the expertise and judgment of the professionals at the Agency ought to be respected, not micro-managed. I intend to use all the tools at my disposal to take advantage of these grants.

Again, I want to underscore how strongly I feel about the need for an agreement between the House, Senate, and the Administration on how to spend ARPA funds. This should come *before* any additional funds are

expended. I also want to reiterate that I do not support deploying these funds in a piecemeal fashion across a hodgepodge of bills and programs. These funds are meant to expedite recovery, revitalize our economy, and make a difference in the lives of Vermonters well into the future. They are not to provide short-term, unsustainable band aids for complicated issues or plug ongoing budget holes.

In conclusion, because this bill contains urgently needed funds for Vermonters, I am allowing it to become law. But the Legislature should take note that I will not support any additional, unnecessary, or unwise use of ARPA or ESSER funding. I urge the Legislature to work with me to take a more collaborative, transparent, and strategic approach to allocating the remaining ARPA funds and maximizing the transformative economic benefits of these once-in-a-lifetime funds for Vermonters.

Sincerely,

/s/Philip B. Scott
Governor

PBS/kp”

Adjournment

On motion of Senator Balint, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 21, 2021.