

Journal of the Senate

FRIDAY, MARCH 18, 2022

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Peter Plagge of Waterbury.

Message from the House No. 33

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 House bills of the following titles:

H. 244. An act relating to authorizing the natural organic reduction of human remains.

H. 500. An act relating to prohibiting the sale of mercury lamps in the State.

H. 523. An act relating to reducing hydrofluorocarbon emissions.

H. 606. An act relating to community resilience and biodiversity protection.

H. 655. An act relating to telehealth licensure and registration and to provisional licensure for professions regulated by the Office of Professional Regulation.

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

The House has considered Senate proposal of amendment to the following House bill:

H. 701. An act relating to cannabis license fees.

And has severally concurred therein.

Senate Resolution Referred**S.R. 21.**

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

By Senator Benning,

S.R. 21. Senate resolution suspending Senate Temporary Rule 10A and calling for a meeting of the Joint Rules Committee to suspend the Legislative Face Mask Policy.

Whereas, in March of 2020, Vermont’s health care infrastructure of over 900 available hospital beds and approximately 100 ICU beds was threatened by the sudden onslaught of patients infected by a virus known as Covid-19; and,

Whereas, Governor Phil Scott thus declared Vermont to be in a state of emergency and imposed a series of protective measures based on scientific guidance from the Centers for Disease Control and Prevention [hereinafter “CDC] and medical advice from his Health Commissioner, Dr. Mark Levine; and,

Whereas, Vermonters responded with a successful campaign of vaccinations, compliance with mask mandates and social distancing; and,

Whereas, the General Assembly also responded with a self-imposed mask wearing requirement in all Statehouse rooms through its Joint Rules Committee; and,

Whereas, Governor Scott has since rescinded his declared state of emergency, thus removing any legal foundation for the General Assembly’s self-imposed mask mandate within its Statehouse ; and,

Whereas, the CDC has declared Covid infection rates in Washington County, home of the General Assembly and Statehouse, to have dropped significantly enough to remove mask requirements unless otherwise advised by one’s personal care provider, thus removing any CDC support for self-imposed mask mandates within the Statehouse; and,

Whereas, as of March 17, only 17 hospital beds and 5 ICU beds are occupied by Covid-19 patients in a State with a population of approximately 640,000, thus demonstrating Vermont’s health care infrastructure is no longer threatened to the point of supporting self-imposed mask mandates within the Statehouse; and,

Whereas, this Senate has control over the Senate chamber and all Senate committee rooms; *now therefore be it resolved*

Resolved by the Senate:

That the self-imposed mask mandate dictated by Senate Temporary Rule 10A be suspended immediately within the Senate chamber and all Senate committee rooms; and,

Resolved: That the Senate representatives to the Joint Rules Committee be directed to call for a meeting of said committee forthwith and vote to suspend immediately the Legislative Face Mask Policy adopted by the Joint Rules Committee for the Capitol Complex.

Thereupon, the President, in her discretion, treated the Senate resolution as a bill and referred it to the Committee on Rules.

Senator Benning, moved to suspend the rules to relieve the Committee on Rules of further consideration of the Senate resolution and that the Senate resolution be taken up for immediate consideration, which was disagreed to.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 244.

An act relating to authorizing the natural organic reduction of human remains.

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

H. 279.

An act relating to miscellaneous changes affecting the duties of the Department of Vermont Health Access.

To the Committee on Health and Welfare.

H. 500.

An act relating to prohibiting the sale of mercury lamps in the State.

To the Committee on Natural Resources and Energy.

H. 523.

An act relating to reducing hydrofluorocarbon emissions.

To the Committee on Natural Resources and Energy.

H. 572.

An act relating to the retirement allowance for interim educators.

To the Committee on Government Operations.

H. 606.

An act relating to community resilience and biodiversity protection.

To the Committee on Natural Resources and Energy.

H. 655.

An act relating to telehealth licensure and registration and to provisional licensure for professions regulated by the Office of Professional Regulation.

To the Committee on Health and Welfare.

Third Reading Ordered**S. 90.**

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

An act relating to establishing an amyotrophic lateral sclerosis registry.

Reported that the bill ought to pass.

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. 161.**

Senator Bray, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to extending the baseload renewable power portfolio requirement.

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

Sec. 1. 30 V.S.A. § 8009 is amended to read:

§ 8009. BASELOAD RENEWABLE POWER PORTFOLIO
REQUIREMENT

* * *

(b) Notwithstanding subsection 8004(a) and subdivision 8005(c)(1) of this title, commencing November 1, 2012, each Vermont retail electricity provider

shall purchase the provider's pro rata share of the baseload renewable power portfolio requirement, which shall be based on the total Vermont retail kWh sales of all such providers for the previous calendar year. The obligation created by this subsection shall cease on November 1, ~~2024~~ 2025.

* * *

Sec. 2. 2021 Acts and Resolves No. 39, Sec. 2 is amended to read:

Sec. 2. PUBLIC UTILITY COMMISSION ORDER EXTENSION

All decisions and orders of the former Public Service Board and the Public Utility Commission in the matter Investigation into the Establishment of a Standard-Offer Price for Baseload Renewable Power under the Sustainably Priced Energy Enterprise Development (SPEED) Program, Docket No. 7782, shall remain in full force and effect through October 31, ~~2024~~ 2025. For years ~~2023 and~~ 2024, ~~and the period from January 1, 2025 to October 31, 2025~~, the purchase price shall be the levelized value determined in Docket No. 7782.

Sec. 3. 2021 Acts and Resolves No. 39, Sec. 3 is amended to read:

Sec. 3. BASELOAD RENEWABLE POWER PORTFOLIO
REQUIREMENT; COLOCATION REPORT

On or before January 15, ~~2023-2024~~, the owner of the baseload renewable power plant subject to 30 V.S.A. § 8009(b) shall report to the General Assembly on whether a project utilizing the excess thermal energy generated by the plant has been developed and is operational, or when a project utilizing the excess thermal energy generated by the plant will be operational.

Sec. 4. 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.

Bill Amended; Third Reading Ordered

S. 162.

Senator Perchlik, for the Committee on Education, to which was referred Senate bill entitled:

An act relating to the collective bargaining rights of teachers.

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

Sec. 1. 16 V.S.A. § 1752 is amended to read:

§ 1752. GROUNDS AND PROCEDURES FOR SUSPENSION AND
DISMISSAL

(a) A teacher under contract to teach in a public school who fails, without just cause, to complete the term for which the teacher contracted to teach, shall be disqualified to teach in any public school for the remainder of the school year.

(b) The provisions of subsections (c) and (d) of this section regarding the nonrenewal, suspension, and dismissal of teachers shall not apply to a teacher employed under the terms of a collective bargaining agreement under chapter 57 of this title that provides the teacher just cause rights. The decision to nonrenew, suspend without pay, or dismiss a teacher shall be made by the school board.

~~(b)(c)~~ Unless otherwise negotiated, a A teacher under contract to teach in a public school whose contract is not to be renewed for the ensuing year shall be notified in writing, setting forth the grounds therefor, ~~no~~ not later than April 15. If the teacher so notified desires a hearing, the teacher shall so request in writing to the clerk of the school board. The teacher shall have the right to a hearing before the school directors within 15 days, may present witnesses and written evidence, and may be represented by counsel. A hearing shall be in executive session unless the teacher making the appeal requests or agrees in writing that it be open to the public. The school board shall affirm, modify, or reverse the nonrenewal and shall issue its decision in writing within five days. In the case of a probationary teacher who has received two written performance evaluations per year of probationary service, a decision of the board shall be final. The standard for nonrenewal of a contract shall be:

(1) In the case of a nonprobationary teacher, just and sufficient cause.

(2) In the case of a probationary teacher, any reason other than those prohibited by law. However, the standard for nonrenewal for a probationary teacher's contract shall be just and sufficient cause if the teacher has not received at least two written performance evaluations per year of probationary service. A probationary teacher is a person who has been employed as a teacher in Vermont public schools for less than two school years.

~~(e)(d)~~ The following provisions shall apply to the suspension or dismissal of a teacher:

(1) A superintendent may suspend a teacher under contract on the grounds of incompetence, conduct unbecoming a teacher, failure to attend to duties, or failure to carry out reasonable orders and directions of the superintendent and school board.

(d)(2) The suspension shall be in writing and shall set forth the grounds therefor. Copies shall be delivered to the teacher, ~~and~~ to the chair, and to the clerk of the board of school directors. Thereafter, performance under the teacher's contract shall be suspended, but ~~he or she~~ the teacher shall be paid pro rata to the time of ~~his or her~~ dismissal by the board.

(e)(3) The teacher so suspended shall have the right to appeal to the board of school directors of the district for review of the decision. Filing a written notice of appeal with the clerk of the school board within seven days ~~of~~ after the effective date of the suspension shall initiate the appeal. The clerk of the board shall forthwith forward a copy of the notice of appeal to the superintendent and send to the teacher an acknowledgment of receipt of the appeal.

(f)(4) The school board to which the appeal is directed shall hear the appeal within 10 days ~~of~~ after receipt of notification. The teacher and the superintendent shall be advised by the clerk of the board of the time and place of hearing by written notice at least three days before the date of hearing.

(g)(5) All parties shall be entitled to counsel at every stage of the proceedings established by this section. Hearings shall be in executive session, unless the teacher making an appeal requests or agrees in writing that they be open to the public. A teacher making an appeal may waive in writing ~~his or her~~ the right to a hearing.

(h)(6) Upon hearing, or if no appeal is taken, the school board shall affirm or reverse the suspension or take such other action, including dismissal, as may appear just. If the suspension, or the dismissal, is reversed, the teacher shall not suffer any loss of pay, retirement benefits, or any other benefits to which ~~he or she~~ the teacher would otherwise have been entitled.

(i)(7) The decision of the school board shall be in writing and filed with the clerk of the school board not later than five days after the hearing or after the time for taking an appeal has expired. The clerk shall within three days notify the superintendent and the teacher in writing of the decision.

(j)(e) No court action shall lie on the part of a teacher against any school district for breach of contract by reason of suspension or dismissal unless the procedures described in this section have been followed by ~~said~~ the teacher.

(k)(f) Every teacher's contract shall be deemed to contain the provisions of this section, and any provision in the contract inconsistent with this section shall be considered of no force or effect.

Sec. 2. 16 V.S.A. § 1986 is added to read:

§ 1986. NONINTERFERENCE WITH RIGHT TO TESTIFY

(a) Subject to subsection (b) of this section, no teacher, administrator, or other employee of a school district or supervisory union shall be subject to discipline by the school district or supervisory union for testifying before the General Assembly or a committee of the General Assembly or before the State Board of Education.

(b) A teacher, administrator, or other employee of a school district or supervisory union who testifies before the General Assembly or a committee of the General Assembly or before the State Board of Education shall not divulge information that is confidential to the school district or supervisory union or to its students or staff and may be disciplined by the individual's employer for divulging such confidential information.

(c) A teacher, administrator, or other employee of a school district or supervisory union who testifies before the General Assembly or a committee of the General Assembly or before the State Board of Education shall, unless authorized by the individual's employer to testify on the employer's behalf, state for the record that the individual is not testifying on behalf of the individual's employer.

Sec. 3. 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.

Bill Amended; Third Reading Ordered

S. 201.

Senator Bray, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to the use of leghold traps.

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

Sec. 1. DEPARTMENT OF FISH AND WILDLIFE; BEST MANAGEMENT PRACTICES FOR TRAPPING

(a) On or before January 15, 2023, the Commissioner of Fish and Wildlife shall submit to the Senate Committee on Natural Resources and Energy, the

House Committee on Natural Resources, Fish, and Wildlife, and the Fish and Wildlife Board recommended best management practices (BMPs) for trapping that propose criteria and equipment designed to modernize trapping and improve the welfare of animals subject to trapping programs. The BMPs shall be based on investigation and research conducted by scientists and experts at the Department of Fish and Wildlife and shall use the “Best Management Practices for Trapping in the United States” issued by the Association of Fish and Wildlife Agencies as the minimum standards for BMP development. The BMPs shall include recommended:

(1) trapping devices and components of trapping devices that are more humane than currently authorized devices and are designed to minimize injury to a captured animal;

(2) criteria for adjusting or maintaining trapping devices so that they operate correctly and humanely;

(3) trapping techniques, including the appropriate size and type of a trap for target animals, use of lures or other attractants, and trap safety;

(4) requirements for the location of traps, including the placing of traps for purposes other than nuisance trapping at a safe distance, from public trails, class 4 roads, playgrounds, parks, and other public locations where persons may reasonably be expected to recreate; and

(5) criteria for when live, captured animals should be released or dispatched.

(b) The report required under subsection (a) of this section shall include a recommendation from the Commissioner of Fish and Wildlife for funding the replacement of currently authorized trapping devices with trapping devices that are compliant with the recommended BMPs. The Commissioner’s recommendation shall include alternatives financed with public funding, private funding, or some combination of public and private funding.

(c) In developing the BMPs required under subsection (a) of this section, the Commissioner shall provide an opportunity for public review and comment and shall hold at least one public hearing regarding the proposed BMPs.

(d) As used in this section, “trapping” means to take or attempt to take furbearing animals with traps including the dispatching of lawfully trapped furbearing animals.

Sec. 2. 10 V.S.A. § 4861 is amended to read:

§ 4861. FUR-BEARING ANIMALS, TAKING, POSSESSION

(a) Fur-bearing animals shall not be taken except in accordance with the provisions of this part, and of rules of the Board. The fur or skins of fur-bearing animals may be possessed at any time unless otherwise provided by this part, rules of the Board, or orders of the Commissioner.

(b) On or before January 1, 2024, the Fish and Wildlife Board shall revise the rules regulating the trapping of fur-bearing animals in the State. The revised rules shall be at least as stringent as best management practices for trapping recommended by the Department of Fish and Wildlife to the General Assembly.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to best management practices for trapping.

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.

Bill Amended; Third Reading Ordered

S. 250.

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

An act relating to enhanced administrative and judicial accountability of law enforcement officers.

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

Sec. 1. 20 V.S.A. § 2366 is amended to read:

§ 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL
POLICING POLICY; ~~RACE~~ DATA COLLECTION

* * *

(e)(1) On or before September 1, ~~2014~~ 2022, every State, county, and municipal law enforcement agency shall collect all data concerning law enforcement encounters, including roadside stop data consisting of the

following:

- (A) the age, gender, and race of the driver;
- (B) the grounds for the stop;
- (C) the grounds for the search and the type of search conducted, if any;
- (D) the evidence located, if any;
- (E) the outcome of the stop, including whether physical force was employed or threatened during the stop, and if so, the type of force employed and whether the force resulted in bodily injury or death, and whether:
 - (i) a written warning was issued;
 - (ii) a citation for a civil violation was issued;
 - (iii) a citation or arrest for a misdemeanor or a felony occurred; or
 - (iv) no subsequent action was taken.

(2) Law enforcement agencies shall work with the Executive Director of Racial Equity, the Criminal Justice Council, and a vendor chosen by the Council with the goals of collecting uniform data, adopting uniform storage methods and periods, and ensuring that data can be analyzed. Roadside stop data, as well as reports and analysis of roadside stop data, shall be public.

(3) On or before ~~September~~ July 1, 2016 2023 and annually thereafter, law enforcement agencies shall provide all data collected by the agency, including the data collected under this subsection, to the Executive Director of Racial Equity and the vendor chosen by the Criminal Justice Council under subdivision (2) of this subsection or, in the event the vendor is unable to continue receiving data under this section, to the Council. Law enforcement agencies shall provide the data collected under this subsection in an electronic format specified by the receiving entity.

(4) The data provided pursuant to subdivision (3) of this subsection shall be posted electronically in a manner that is analyzable and accessible to the public on the receiving agency's website and clear and understandable. ~~The receiving agency shall also report the data annually to the General Assembly.~~

(5) Annually, on or before July 1, all law enforcement agencies shall report the data collected pursuant to subdivision (3) of this subsection to the House and Senate Committees on Government Operations and on Judiciary. The report shall detail how the data is collected, how the data is accessible, how the data is used by the law enforcement agency, a review of the data to determine if additional data criteria is needed, and any recommendations to

improve data collection and use.

(6) As used in this subsection, “physical force” shall refer to the force employed by a law enforcement officer to compel a person’s compliance with the officer’s instructions that constitutes a greater amount of force than handcuffing a compliant person.

* * *

Sec. 2. 20 V.S.A. § 2370 is added to read:

§ 2370. LAW ENFORCEMENT OFFICER INFORMATION DATABASE

(a) Purpose. The purpose of this section is to create a law enforcement officer information database that catalogues potential impeachment information concerning law enforcement agency witnesses or affiants and enables a prosecutor to disclose such information consistently and appropriately under the obligations of *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny.

(b) Database. The Vermont Criminal Justice Council shall maintain a database cataloging any potential impeachment information concerning a law enforcement officer. Potential impeachment information may include:

(1) any finding of misconduct that reflects upon the truthfulness or possible bias of the law enforcement officer, including a finding of a lack of candor during a criminal, civil, or administrative inquiry or proceeding;

(2) any past or pending criminal charge brought against the law enforcement officer;

(3) any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;

(4) any prior findings by a judge that a law enforcement officer testified untruthfully, made a knowing false statement in writing, engaged in an unlawful search or seizure, illegally obtained a confession, or engaged in other misconduct;

(5) any misconduct finding or pending misconduct allegation that either casts a substantial doubt upon the accuracy of a law enforcement officer as a witness, including testimony, that a prosecutor intends to rely on to prove an element of any crime charged, or that might have a significant bearing on the admissibility of prosecution evidence;

(6) information that may be used to suggest that the law enforcement officer is biased for or against a defendant; or

(7) information that reflects that the law enforcement officer's ability to perceive and recall truth is impaired.

(c) Duty to report. A law enforcement agency's executive officer or designee shall report any information required to be cataloged under this section to the Council within 10 business days after discovering the information.

(d) Accessibility. The database shall be accessible to the State's Attorney of any county of this State or designee and the Attorney General of this State or designee for the purpose of complying with the disclosure obligations of *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny. This database shall not be accessible to anyone not listed in this subsection.

(e) Confidentiality. The database, documents, materials, or other information in possession or control of the Council that are obtained by or reported to the Council under this section shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The Council is authorized to use the database, or related documents, materials, or other information, in furtherance of the Council's official duties. Unless otherwise authorized by law, the Council shall not disclose the database or make related documents, materials, or other information public without the prior written consent of the law enforcement agency and the law enforcement officer. Neither the Council nor any person who received documents, materials, or other information shared under this section shall be required to testify in any private civil action concerning the database or any confidential documents, materials, or information subject to this section. Nothing in the section shall exempt the Council, a State's Attorney, or the Attorney General from disclosing public records pursuant to 1 V.S.A. chapter 5, subchapter 3.

Sec. 3. 13 V.S.A. § 5585 is amended to read:

§ 5585. ELECTRONIC RECORDING OF A CUSTODIAL
INTERROGATION

(a) As used in this section:

(1) "Custodial interrogation" means any interrogation:

(A) involving questioning by a law enforcement officer that is reasonably likely to elicit an incriminating response from the subject; and

(B) in which a reasonable person in the subject's position would consider ~~himself or herself~~ the person to be in custody, starting from the moment a person should have been advised of ~~his or her~~ the person's Miranda rights and ending when the questioning has concluded.

* * *

(b)(1) A custodial interrogation that occurs in a place of detention concerning the investigation of a felony violation of ~~chapter 53 (homicide) or 72 (sexual assault)~~ of this title shall be electronically recorded in its entirety.

(2) In consideration of best practices, law enforcement shall strive to record simultaneously both the interrogator and the person being interrogated.

(c)(1) The following are exceptions to the recording requirement in subsection (b) of this section:

(A) exigent circumstances;

(B) a person's refusal to be electronically recorded;

(C) interrogations conducted by other jurisdictions;

(D) a reasonable belief that the person being interrogated did not commit a felony violation of ~~chapter 53 (homicide) or 72 (sexual assault)~~ of this title and, therefore, an electronic recording of the interrogation was not required;

(E) the safety of a person or protection of ~~his or her~~ the person's identity; and

(F) equipment malfunction.

* * *

Sec. 4. STUDY ON DECEPTIVE AND COERCIVE METHODS OF LAW ENFORCEMENT INTERROGATION; REPORT

(a) The Joint Legislative Justice Oversight Committee shall in its discretion select an organization to submit a written report studying the use of deceptive and coercive interrogation tactics employed by law enforcement in the State of Vermont. In particular, the report shall study and provide recommendations:

(1) concerning when providing false facts about evidence to a suspect during an interview conducted after the commission of a crime results in an involuntary confession or admission to the crime;

(2) regarding when confessions or admissions to crimes procured by providing a defendant with false facts should be inadmissible;

(3) concerning the appropriate age and circumstances to prohibit coercive techniques in cases involving juveniles;

(4) concerning the use of the interrogation and interviewing techniques, including the Reid Technique of Investigative Interviews and Advanced Interrogation Techniques, by law enforcement; and

(5) regarding legislation, initiatives, or programs for the General Assembly and law enforcement to consider to improve current practices.

(b) In preparation of the report, the Committee shall have the administrative, technical, and legal assistance of its selected entity, the Vermont Criminal Justice Council, the Council of State Governments, and any other stakeholders interested in assisting with the report.

Sec. 5. EFFECTIVE DATES

(a) Sec. 2 (law enforcement database) shall take effect on January 1, 2023.

(b) All other sections shall take effect on July 1, 2022.

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, and pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, Senators Ram Hinsdale, Clarkson, Collamore, Pollina and White moved to amend the recommendation of the Committee on Government Operations in Sec. 4, study on deceptive and coercive methods of law enforcement interrogation; report, subsection (a), by striking out the words “in its discretion select an organization to”

And that after passage the title of the bill be amended to read:

An act relating to law enforcement data collection and interrogation.

Which was agreed to.

Thereupon, the recommendation of amendment of the Committee on Government Operations, as amended, was agreed to and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 254.

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

An act relating to creating a private right of action against law enforcement officers for violating rights established under Vermont law.

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. chapter 190 is added to read:

CHAPTER 190. VIOLATIONS OF ARTICLE 11 OF THE VERMONT
CONSTITUTION BY LAW ENFORCEMENT

§ 5607. STANDARD TO RECOVER DAMAGES

(a) It is the intent of the General Assembly to codify the principle established by the Vermont Supreme Court in *Zullo v. State*, 2019 VT 1 as a burden that a plaintiff must prove to obtain damages in an action brought against any Vermont law enforcement agency for a violation of Article 11 of the Constitution of the State of Vermont.

(b) As used in this chapter, “law enforcement agency” has the same meaning as in 20 V.S.A. § 2351a.

§ 5608. RECORD OF CASE DISPOSITION

Each law enforcement agency shall maintain a record of all final judgments and settlements paid by the law enforcement agency for claims made pursuant to this chapter and attach a copy of the complaint to each record. All judgments, settlements, and their underlying complaints are subject to public disclosure unless an exemption applies pursuant to 1 V.S.A. § 317. Any record disclosed shall include the name of the law enforcement agency and the monetary amount paid pursuant to the judgment or settlement.

Sec. 2. REPORT ON ACCESS TO CIVIL JUSTICE REMEDIES AND LAW ENFORCEMENT QUALIFIED IMMUNITY IN VERMONT

(a) On or before November 15, 2022, the Office of Legislative Counsel shall submit a written report to the Senate Committee on Judiciary, the House Committee on Judiciary, and the Joint Legislative Justice Oversight Committee concerning the impact of the doctrine of qualified immunity on access to civil justice remedies for people wrongfully harmed by bad-faith policing and violations of civil rights in the State of Vermont. In particular, the report shall identify:

(1) the origins of the doctrine of qualified immunity and its present interpretation by the State courts of Vermont;

(2) existing constitutional, statutory, and common law causes of action for redressing the alleged misconduct of Vermont law enforcement under Vermont law;

(3) existing immunities from suit concerning allegations of Vermont law enforcement misconduct under Vermont law;

(4) existing defenses to liability concerning allegations of Vermont law enforcement misconduct under Vermont law;

(5) existing statutory and common law limitations on damages concerning allegations of Vermont law enforcement misconduct under Vermont law; and

(6) the applicability of the doctrine of qualified immunity to all certified law enforcement officers.

(b) In the preparation of the report, the Office of Legislative Counsel shall have the administrative, technical, and legal assistance of the Office of the Vermont Attorney General, the Office of the Vermont Defender General, the Center for Justice Reform at Vermont Law School, and other stakeholders interested in assisting with the report.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

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, and pending the question, Shall the bill be amended as recommended by the Committee on Judiciary?, Senators Sears and White moved to amend the recommendation of the Committee on Judiciary as follows:

First: In Sec. 1, 12 V.S.A. chapter 190, § 5607, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) It is the intent of the General Assembly to codify the common law principle for a plaintiff seeking damages for an alleged violation of Article 11 of the Vermont Constitution as established by the Vermont Supreme Court's decision in *Zullo v. State*, 2019 VT 1 and apply it uniformly as a burden that a plaintiff must prove to recover damages in an action brought against any Vermont law enforcement agency alleging a violation of Article 11.

Second: In Sec. 1, 12 V.S.A. chapter 190, § 5607, by adding a new subsection (b) to read as follows:

(b) A plaintiff seeking damages against any Vermont law enforcement agency directly under Article 11 of the Vermont Constitution based on a law enforcement officer's alleged violation of that constitutional provision must show that:

(1) the law enforcement officer committed a violation of Article 11 of the Vermont Constitution;

(2) there is no meaningful alternative in the context of the particular case; and

(3) the law enforcement officer knew or should have known that the officer violated clearly established law or the officer acted in bad faith.

And by relettering the remaining subsection to be alphabetically correct.

Third: In Sec. 2, report on access to civil justice remedies and law enforcement qualified immunity in Vermont, by adding a new subsection (b) to read as follows:

(b) The report shall be confined to legal analysis and shall not make any policy recommendations.

And by relettering the remaining subsection to be alphabetically correct.

And that after passage the title of the bill be amended to read:

An act relating to recovering damages for Article 11 violations by law enforcement and a report on qualified immunity.

Which was agreed to.

Thereupon, the recommendation of amendment of the Committee on Judiciary, as amended, was agreed to and third reading of the bill was ordered.

Message from the House No. 34

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 House bills of the following titles:

H. 266. An act relating to health insurance coverage for hearing aids.

H. 399. An act relating to incarceration terms for criminal defendants who are primary caretakers of dependent children.

H. 475. An act relating to the classification system for criminal offenses.

H. 482. An act relating to the Petroleum Cleanup Fund.

H. 548. An act relating to miscellaneous cannabis establishment procedures.

H. 551. An act relating to prohibiting racially and religiously restrictive covenants in deeds.

H. 715. An act relating to the Clean Heat Standard.

H. 722. An act relating to final reapportionment of the House of Representatives.

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

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 44. Joint resolution providing for a Joint Assembly to vote on the retention of six Superior Judges.

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

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 46. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

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

H.C.R. 120. House concurrent resolution congratulating the 2022 Mt. Anthony Union High School boys' Division I Nordic skiing championship team.

H.C.R. 121. House concurrent resolution congratulating the 2022 Mt. Anthony Union High School Patriots State championship wrestling team.

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

The House has considered concurrent resolution originating in the Senate of the following title:

S.C.R. 17. Senate concurrent resolution honoring John Shannahan for his extraordinary contributions to the economic and cultural life of the Town of Bennington.

And has adopted the same in concurrence.

Senate Concurrent Resolution

The following joint concurrent resolution, 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, was adopted on the part of the Senate:

By Senators Campion and Sears,

By Reps. Corcoran and others,

S.C.R. 17.

Senate concurrent resolution honoring John Shannahan for his extraordinary contributions to the economic and cultural life of the Town of Bennington.

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 Reps. Morrissey and others,

By Senators Campion and Sears,

H.C.R. 120.

House concurrent resolution congratulating the 2022 Mt. Anthony Union High School boys' Division I Nordic skiing championship team.

By Reps. Morrissey and others,

By Senators Campion and Sears,

H.C.R. 121.

House concurrent resolution congratulating the 2022 Mt. Anthony Union High School Patriots State championship wrestling team.

Adjournment

On motion of Senator Balint, the Senate adjourned, to reconvene on Tuesday, March 22, 2022, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 46.