

Journal of the House

Wednesday, March 25, 2009

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rev. Douglas Carter of Danville Congregational Church and Jon Gailmor and Staff of the Vermont Arts Council.

Bill Referred to Committee on Ways and Means

H. 434

House bill, entitled

An act relating to agency of agriculture, food and markets revenues

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Joint Resolution Placed on Calendar

J.R.H. 14

Joint resolution relating to the closure and rehabilitation of the Vilas Bridge

Offered by: Representatives Obuchowski of Rockingham, Partridge of Windham, Deen of Westminster and Mrowicki of Putney

Whereas, the Connecticut River divides the communities of Walpole, New Hampshire and Bellows Falls, Vermont, and

Whereas, the Vilas Bridge, with the state of New Hampshire owning 93 percent and the state of Vermont seven percent, is a 635-foot span that joins these municipalities into a single social and economic community within the Connecticut River Valley, and

Whereas, constructed in 1930, the Vilas Bridge was listed on the National Register of Historic Places in 1989 and is the only remaining three-span open spandrel reinforced concrete arch bridge in New Hampshire, and

Whereas, a May 1994 memorandum of agreement to which the Federal Highway Administration, the New Hampshire department of transportation, and the New Hampshire state historic preservation office were each a party

commits the state of New Hampshire to restore the bridge in accordance with that state's ten-year highway program, and

Whereas, according to the New Hampshire department of transportation, an average of 4,600 vehicles cross the bridge each day, and

Whereas, over 20 years ago, the New Hampshire department of transportation placed the Vilas Bridge on the state's red or danger list, finding the bridge to be structurally insufficient, and assigned it a sufficiency rating of 3.1 percent out of a possible 100 percent, and

Whereas, the New Hampshire department of transportation's Ten Year Plan had previously proposed a rehabilitation of the Vilas Building in 2010, and a more recent version of the plan delayed that date until 2015, and

Whereas, on March 31, 2006, the Vermont General Assembly adopted a resolution urging the state of New Hampshire to expedite the rehabilitation of the Vilas Bridge, a vital roadway for the residents of Bellows Falls and Walpole, New Hampshire, and

Whereas, the danger of driving or walking across the Vilas Bridge has now become so acute that the New Hampshire department of transportation closed the span to all vehicular and pedestrian traffic on March 19, 2009, following a semiannual inspection that found, to no one's surprise, that the bridge was absolutely unsafe for either mode of transportation, and

Whereas, the closure of the Vilas Bridge will block direct access from Walpole, New Hampshire into downtown Bellows Falls, forcing traffic to flow instead across the new arch bridge located approximately one mile to the north, and

Whereas, the diverting of traffic to the new arch bridge will cause excessive pressure on this span and connecting roads and potentially deprive Bellows Falls of severely needed consumer dollars, and

Whereas, the Vilas Bridge is currently ranked 18th on the New Hampshire department of transportation's priority replacement list, which is indefensible given the traffic congestion and economic hardship its closure may precipitate and the department's ranking of this span on its danger list for over two decades, and

Whereas, in Vermont, the Richmond Bridge, which is also a severely deteriorated bridge that serves as a community's economic lifeline was raised on the state's priority replacement list after Congressman Welch secured federal stimulus funding for its rehabilitation, and the rehabilitation work on this span has already commenced, and

Whereas, a comparable effort on the part of the New Hampshire Congressional Delegation might produce a similar result, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly implores the New Hampshire Congressional Delegation, New Hampshire Governor John Lynch, the New Hampshire Executive Council, and the New Hampshire General Court to make every possible effort to seek federal economic stimulus money to finance the rehabilitation of the Vilas Bridge as expeditiously as possible, and be it further

Resolved: That the General Assembly strongly urges the state of New Hampshire in the alternative to reprioritize upward the replacement ranking of the Vilas Bridge and to finance this project from either other federal transportation funds designated for the state of New Hampshire or state gasoline tax revenue, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the New Hampshire Congressional Delegation, New Hampshire Governor John Lynch, the New Hampshire Executive Council, New Hampshire Commission of Transportation George Campbell Jr., the chairs of the House and Senate transportation committees of the New Hampshire General Court, Vermont Secretary of Transportation David Dill, and the Vermont Congressional Delegation.

Which was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

Joint Resolution Referred to Committee

J.R.S. 18

Whereas, in the United States, drug manufacturers are allowed to discriminate in drug pricing, and

Whereas, drug prices in the aggregate are higher in the United States than anywhere else in the world, and

Whereas, prescription drug spending is rising faster than any other health expenditure, and

Whereas, providing for affordable access to medically necessary prescription drugs will lower health care costs, and

Whereas, pharmaceutical companies benefit from public tax dollars appropriated to the National Institutes on Health and other government agencies to pay for a substantial portion of all new prescription drug research, and

Whereas, the cost of prescription drugs remains unaffordable for a large number of Vermonters, and

Whereas, among the persons who are most reliant on prescription drugs are Vermont's senior citizens, individuals with disabilities, and individuals with chronic diseases, and

Whereas, many citizens are reluctantly adopting unhealthy and potentially dangerous practices of reducing their physicians' prescribed prescription drug dosages or traveling to Canada to obtain their prescription drugs for lower costs, and

Whereas, pharmaceutical companies spend, on average, twice as much on advertising and marketing as they do on research and development, and

Whereas, one of the significant factors contributing to the increasing costs of prescription drugs is the growth of direct consumer promotional campaigns sponsored by the nation's pharmaceutical companies through print, broadcast and Internet media, and

Whereas, under Section 201(m) of the Food, Drug and Cosmetics Act, the Food and Drug Administration is responsible for regulating the promotional activities associated with prescription drugs, and

Whereas, the brief summaries of information relating to possible side-effects, contraindications, and effectiveness in advertisements is often overshadowed by the attractive and promotional character of the advertisement that has the potential to lure a lay person into accepting the positive claims and ignoring the less prominently promoted and possibly dangerous side-effects, and

Whereas, television advertisements have grown swiftly since 1997, when the Food and Drug Administration issued more relaxed guidance for direct consumer broadcast advertising, and

Whereas, prescription drug advertising may be misleading by not adequately communicating risk information, and may damage physician-patient relationships, increase prescription drug prices, increase liability actions, and lead to overmedication and drug abuse, and

Whereas, the Food and Drug Administration has repeatedly reprimanded drug companies for false or misleading advertising of prescription drugs that are prescribed for many maladies, including allergies, reduction of high blood pressure or cholesterol levels, and sexually transmitted diseases, and

Whereas, with the change of leadership at the Food and Drug Administration, and the-now more than a decade of nearly limitless television

advertisements inducing unknowing consumers to purchase potentially harmful prescription drugs, as well the increased prevalence of similarly intended advertisements on popular websites, the time to rein in direct advertising of prescription drugs to consumers has clearly arrived, and

Whereas, an important price reduction option for both private consumers and state governments has been an increasing reliance on generic drugs which cost considerably less than their brand-name counterparts, but provide equivalent medicinal benefit, and

Whereas, a major impediment to the introduction of new generic drugs is a controversial patent infringement provision Congress adopted in 1984 as part of the Hatch-Waxman Act, and

Whereas, under this provision, a pharmaceutical company holding the patent on a brand-name drug can immediately trigger an automatic 30-month Food and Drug Administration-imposed delay in a generic drug's introduction, and

Whereas, in response to the impediment to the prompt introduction of effective generic drugs, Congress should speedily enact legislation to repeal this statutory impediment, and

Whereas, enactment of such federal legislation would serve as an important incentive for the expedited introduction of new generic drugs, and

Whereas, Medicare Part D prescription drug plans are unaffordable for many Vermonters without Vermont's state wrap-around program called "VPharm," and

Whereas, the federal government does not negotiate for rebates and discounts in the Medicare Part D program, and

Whereas, state Medicaid programs have greatly reduced drug prices in the Medicaid program by negotiating with pharmaceutical companies for reduced prices through rebates and discounts, and

Whereas, Medicare Part D is funded, in part, through payments from the states to the federal government, commonly known as the "clawback," and

Whereas, many senior citizens and individuals with disabilities on Medicare Part D, as well as states, would benefit from negotiated, reduced prices in the Medicare Part D program, and

Whereas, if the cost of prescription drugs is to be substantially reduced, the federal government must adopt new, more stringent, and effective regulatory restrictions on direct consumer prescription drug advertising, increase access to

generic drugs, and negotiate prices in the Medicare Part D program, *now therefore be it*

Resolved by the Senate and the House of Representatives:

That the General Assembly calls upon our Congressional Delegation immediately to propose and seek passage of legislation that will:

1) Require any pharmaceutical company which receives or benefits from any federal funding for pharmaceutical research and development to amortize all of the company's research and development costs over the entire world market for prescription drugs;

2) Amend 42 U.S.C. § 381 and other related statutes so as to allow for the free trade of prescription drugs between Canada and the United States;

3) Restrain the huge expenditures by pharmaceutical companies on advertising and marketing;

4) Repeal the federal statutory patent infringement provision that enables the delay of the introduction of generic drugs to the public marketplace; and

5) Allow the Centers for Medicare and Medicaid to negotiate with pharmaceutical companies for rebates and discounts in the Medicare Part D program, *and be it further*

Resolved: That the General Assembly urges the federal Food and Drug Administration to institute a moratorium on the promotion of prescription drugs directly to consumers, and that during the moratorium, the Food and Drug Administration promulgate more effective regulations to address prescription drug advertisements directed at consumers, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of the Food and Drug Administration and to the Vermont Congressional Delegation.

Which was read and, in the Speaker's discretion, treated as a bill and referred to the Committee on Human Services.

Joint Resolution Referred to Committee

J.R.S. 24

Adam Walsh Child Protection and Safety Act of 2006.

Whereas, in 2006, President Bush signed the Adam Walsh Child Protection and Safety Act, and the states are required to comply with the Act by July 27, 2009, or lose 10 percent of the state's federal Byrne/Justice Access Grant funds, and

Whereas, the General Assembly agrees with the Act's purpose of protecting the public, especially children, from violent sex offenders, as evidenced by the substantial amount of legislation enacted in Vermont during the past five years to protect citizens of our state from the dangers that sex offenders pose, and

Whereas, despite the Act's good intentions, the Office of Justice Programs' SMART office, which is responsible for regulations and compliance under the Act, has not certified any state in substantial compliance largely due to the costs and complexities associated with the Act, and

Whereas, regulations that former United States Attorney General Alberto Gonzales issued to implement the Act have exacerbated the Act's problems and made state compliance even more difficult, and

Whereas, the inability to comply with the Act means that every state in the country stands to lose 10 percent of its federal Byrne/Justice Access Grant funds on July 27 of this year, and

Whereas, in addition to its financial challenges for states, the Act contains a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based best practices and at a substantial financial cost to the state, and

Whereas, Vermont has adopted a practice of assigning offender risk levels through the use of actuarial risk assessment instruments that have a high correlation to sexual recidivism, and

Whereas, the Act mandates an entirely different offense tier structure and demands that risk determinations be based solely on an offender's crime of conviction, a methodology that, according to the most recent research, is a far less reliable predictor of reoffense than the use of actuarial tools, and

Whereas, Vermont, long a national leader in juvenile justice matters, has since 1981 permitted prosecutors to hold minors accountable for serious criminal behavior by charging them in adult court for serious crimes, and is therefore not an appropriate state for the Act's retroactive application to juveniles, and

Whereas, the Council of State Governments found that the Act's juvenile provisions "contradict the rehabilitative intent and confidentiality that has been inherent in the juvenile justice system" and "ignore important developmental differences between juveniles and adults, namely that juvenile sex offenders are at a much lower risk to reoffend than adult sex offenders," and, on the basis of those findings, adopted a resolution on December 6, 2008, strongly

opposing the Act's application to juvenile sex offenders and urging Congress to revise it to address more accurately the needs of juvenile offenders, and

Whereas, the National Conference of State Legislatures's 2008-09 Law and Criminal Justice Committee policies state that "NCSL objects to the Adam Walsh Act's one-size-fits-all approach to classifying, registering and, in some circumstances, sentencing sex offenders" because provisions of the Act "preempt many state laws and create an unfunded mandate for states," "were crafted without state input or consideration of current state practices," and "are inflexible and, in some instances, not able to be implemented," and

Whereas, the General Assembly recognizes the Act's worthy goal of establishing some continuity and uniformity among the sex offender registry laws of the various states, but believes such a goal can be accomplished while preserving the ability of each state to develop its own approaches that are specifically fashioned to meet its particular needs and circumstances, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly urges the Vermont Congressional delegation to ask Congress to extend the state compliance date under the Adam Walsh Act and to ask the SMART office to reconsider the rules issued under it, so that Congress and the states have the opportunity to work toward a solution that will honor the intent of the Act by creating a more consistent system of sex offender registries throughout the country while preserving the authority of individual states to develop the approaches that are most effective for them, *and be it further*

Resolved: That the Secretary of State be directed to send copies of this resolution to the V

Which was read and, in the Speaker's discretion, treated as a bill and referred to the Committee on Judiciary.

Joint Resolution Adopted in Concurrence

J.R.S. 25

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 27, 2009, it be to meet again no later than Tuesday, March 31, 2009.

Was taken up read and adopted in concurrence.

Committee Bill Introduced**H. 438**

By the committee on Transportation,

An act relating to the state's transportation program;

Under the rule, placed on the Calendar for notice.

Rules Suspended; Senate Bills Referred

Senate bills of the following titles were severally introduced. Pending first reading of the bills, on motion of **Rep. Komline of Dorset**, the rules were suspended and the bills were read the first time by number and referred to committee as follows:

S. 2

Senate bill, entitled

An act relating to offenders with a mental illness or other functional impairment;

To the committee on Corrections and Institutions.

S. 3

Senate bill, entitled

An act relating to prohibiting retaliation for legislative testimony;

To the committee on Judiciary.

S. 7

Senate bill, entitled

An act to prohibit the use of lighted tobacco products in the workplace;

To the committee on Human Services.

S. 18

Senate bill, entitled

An act relating to limiting the power of municipalities or deeds to prohibit the installation of solar collectors, clotheslines, or other energy devices based on renewable resources;

To the committee on Natural Resources and Energy.

S. 25

Senate bill, entitled

An act relating to the repeal or revision of certain state agency reporting requirements;

To the committee on Government Operations.

S. 26

Senate bill, entitled

An act relating to recovery of profits from crime;

To the committee on Judiciary.

S. 27

Senate bill, entitled

An act relating to tastings and sale of wines, fortified wines and spirits;

To the committee on General, Housing and Military Affairs.

S. 69

Senate bill, entitled

An act relating to digital campaign finance filings;

To the committee on Government Operations.

S. 85

Senate bill, entitled

An act relating to the patient's privilege;

To the committee on Judiciary.

S. 86

Senate bill, entitled

An act relating to the administration of trusts;

To the committee on Commerce and Economic Development.

Committee Appointed

The Speaker appointed a member to the following committee:

Vermont Veteran's Memorial Cemetery Commission

Rep. Joe Acinapura of Brandon

Rep. Lucy Leriche of Hardwick in Chair.

Third Reading; Bills Passed

House bills of the following titles were severally taken up, read the third time and passed:

H. 34

House bill, entitled

An act relating to automated external defibrillators;

H. 287

House bill, entitled

An act relating to Uniform Prudent Management of Institutional Funds Act;

Bill Read Second Time; Third Reading Ordered**H. 431**

Rep. Atkins of Winooski spoke for the committee on Government Operations.

House bill entitled

An act relating to miscellaneous adjustments to the public retirement systems;

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Bill Amended; Third Reading Ordered**H. 15**

Rep. Adams of Hartland, for the committee on Fish, Wildlife & Water Resources, to which had been referred House bill, entitled

An act relating to aquatic nuisance control

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 50 is added to read:

CHAPTER 50. AQUATIC NUISANCE CONTROL

§ 1451. FINDINGS

The general assembly finds that:

(1) It is the policy of the state of Vermont that the water resources of the state shall be protected, regulated, and where necessary controlled under the

authority of the state in the public interest to promote the general welfare and to protect public health and the environment.

(2) It is the policy of the state of Vermont to prevent the infestation and invasive proliferation of new aquatic species in waters of the state that result in negative environmental impacts, including habitat loss and a reduction in native biodiversity along with adverse social and economic impacts and impacts to the public health and safety.

(3) The ability to initiate quickly a response to contain and control a new aquatic species introduction before it can spread is critical to reduce future management costs and protect the integrity of Vermont's ecosystems.

(4) Infestations of new aquatic species must be detected early and acted upon swiftly to minimize economic, social, and ecological impacts as well as to increase the probability of a successful eradication effort.

§ 1452. DEFINITIONS

As used in this chapter:

(1) "Agency" means the agency of natural resources.

(2) "Aquatic nuisance" means undesirable or excessive substances or populations that interfere with the recreational potential or aquatic habitat of a body of water. Aquatic nuisances include rooted aquatic plants and animal and algal populations.

(3) "Aquatic plant" means a plant that naturally grows in water, saturated soils, or seasonally saturated soils, including algae and submerged, floating-leafed, floating, or emergent plants.

(4) "Biological controls" mean multi-cellular organisms.

(5) "Board" means the water resources panel of the natural resources board.

(6) "New aquatic species" means an aquatic species that was not known to occur in a surface water of Vermont or in a segment of Lake Champlain as of January 1, 2007.

(7) "Pesticide" means any substance produced, distributed, or used for preventing, destroying, or repelling nuisance aquatic plants, insects, or other aquatic life, including lamprey. Pesticide includes unicellular organisms or extracts from unicellular organisms and does not include biological controls.

(8) "Secretary" means the secretary of natural resources.

(9) "Water resources" means the waters and the values inherent or potential in waters and their uses.

(10) "Waters" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, and springs and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.

§ 1453. AQUATIC NUISANCE CONTROL PROGRAM

(a) The agency of natural resources shall establish and maintain an aquatic nuisance control program.

(b) The aquatic nuisance control program shall perform the following services:

(1) receive and respond to aquatic nuisance complaints;

(2) work with municipalities, local interest organizations, private individuals, and agencies of the state to develop long-range programs regarding aquatic nuisance controls;

(3) work with federal, state, and local governments to obtain funding for aquatic nuisance control programs;

(4) implement an aquatic species rapid response program under this chapter;

(5) administer a grant-in-aid program under section 1458 of this title;

(6) place a sign at least 2 feet by 2 feet in size which states that the water is infected with an aquatic nuisance and that a person transporting the nuisance in violation of section 1454 of this title may be subject to a penalty of up to \$1,000.00 pursuant to 23 V.S.A. § 3317, so that the sign is easily visible from a ramp used to launch vessels at any fish and wildlife access area on a body of water infected with an aquatic nuisance;

(7) provide the commissioner of fish and wildlife and the commissioner of motor vehicles with written educational information about aquatic nuisances that can be included in an envelope containing a boat registration and in a department of fish and wildlife publication pertaining to fishing and boating.

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC

NUISANCE SPECIES

(a) No person shall transport an aquatic plant or aquatic plant part, zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), or other aquatic nuisance species identified by the secretary by rule to or from any

Vermont waters on the outside of a vehicle, boat, personal watercraft, trailer, or other equipment. This section shall not restrict proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species.

(b) The secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species for scientific or educational purposes. When granting exceptions, the secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the secretary authorizing the transport must accompany the specimens during transport.

§ 1455. AQUATIC NUISANCE CONTROL PERMIT

(a) No person may use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices in waters of the state to control nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey, unless that person has been issued a permit by the secretary.

(b) Notwithstanding other requirements set forth in chapter 47 of this title to the contrary, the secretary may issue permits under this section.

(c) Persons desiring a permit under this section shall make application to the secretary on a form prescribed by the secretary.

(d) The secretary shall issue a permit for the use of pesticides in waters of the state for the control of nuisance aquatic plants, insects, or other aquatic life, including lamprey, when the applicant demonstrates and the secretary finds:

- (1) there is no reasonable nonchemical alternative available;
- (2) there is acceptable risk to the nontarget environment;
- (3) there is negligible risk to public health;

(4) a long-range management plan has been developed which incorporates a schedule of pesticide minimization; and

(5) there is a public benefit to be achieved from the application of a pesticide or, in the case of a pond located entirely on a landowner's property, no undue adverse effect upon the public good.

(e) A landowner applying to use a pesticide on a pond located entirely on the landowner's property is exempt from the requirement of subdivision (d)(4) of this section.

(f) The secretary shall issue a permit for the control of aquatic nuisances by biological controls, bottom barriers, structural barriers, structural controls, powered mechanical devices, or chemicals other than pesticides when the secretary finds:

- (1) there is acceptable risk to the nontarget environment;
- (2) there is negligible risk to public health; and
- (3) there is either benefit to or no undue adverse effect upon the public good.

(g) The use of bottom barriers, structural barriers, structural controls, powered mechanical devices, and copper compounds as an algaecide in waters with a surface area of one acre or less located entirely on a person's property and with an outlet where the flow can be controlled for at least three days is exempt from the permit requirements of this section.

(h) The secretary shall adopt procedures under 3 V.S.A. chapter 25 which will provide an opportunity for public review and comment on permit applications. The procedures shall classify permit applications by degree of environmental risk involved and establish appropriate opportunities for public notice and comment for each class.

(i) An aquatic nuisance control permit issued under this section shall:

(1) specify in writing the secretary's findings under subsection (d) or (f) of this section;

(2) specify the location, manner, nature, and frequency of the permitted activity;

(3) contain additional conditions, requirements, and restrictions as the secretary deems necessary to preserve and protect the quality of the receiving waters, to protect the public health, and to minimize the impact on the nontarget environment. Such conditions may include requirements concerning recording, reporting, and monitoring;

(4) be valid for the period of time specified in the permit, not to exceed three years for chemical control, and not to exceed ten years for nonchemical control.

(j) An aquatic nuisance control permit issued under this chapter may be renewed from time to time upon application to the secretary. The process of permit renewal will be consistent with the requirements of this section.

(k) An applicant for a permit under this section shall pay an application fee as required by 3 V.S.A. § 2822. The agency of natural resources shall be exempt from this fee requirement.

(l) No permit shall be required under this section for mosquito control activities that are regulated by the agency of agriculture, food and markets, provided that:

(1) Prior to authorizing the use of larvicides or pupacides in waters of the state, the secretary of agriculture, food and markets shall designate acceptable control products and methods for their use and issue permits pursuant to 6 V.S.A. § 1083(5); and

(2) On an annual basis, the secretary of agriculture, food and markets shall notify the secretary of the location of all authorized mosquito control applications to the waters of the state that took place during the reporting year and the type and quantity of larvicide and pupacide used at each location.

(m) The secretary may issue general permits for the use of nonchemical aquatic nuisance control activities provided that the secretary makes the findings required in subsection (f) of this section. A general permit issued under this subsection is not required to specify the exact location or the frequency of the permitted activity.

§ 1456. AQUATIC SPECIES RAPID RESPONSE GENERAL PERMITS

(a) Notwithstanding the requirements of section 1455 of this title, the secretary may issue an aquatic species rapid response general permit under this section for a term not to exceed ten years for the control of a nonindigenous new aquatic species. This general permit shall identify the control technique, including the use of biological controls, pesticides, and any other control techniques for the nonindigenous new aquatic species for which coverage may be sought under the permit.

(b) Applications for coverage under this general permit shall be limited to the commissioner of environmental conservation and the commissioner of fish and wildlife. The application shall state the grounds for declaring an emergency situation as defined in subsection (f) of this section. The application shall identify the nonindigenous new aquatic species and control techniques selected to respond to the emergency.

(c) The secretary shall provide notice of the application to the municipal clerk of the municipality or municipalities in which the proposed control activity will be conducted at the time the request for authorization is filed with the secretary. The secretary shall provide an opportunity for written comment regarding whether the request complies with the terms and conditions of the

aquatic species rapid response general permit for 10 days following receipt of the request for authorization.

(d) The secretary may issue an authorization under an aquatic species rapid response general permit only when the secretary finds:

(1) that an emergency exists; and

(2) that the proposed control technique meets the requirements of the general permit and is acceptable when considering the emergency situation.

(e) Authorization to act under the terms of a general permit issued under this section shall not exceed three years.

(f) Prior to determining that a nonindigenous new aquatic species emergency exists, the secretary shall consider the following factors:

(1) the likelihood that the nonindigenous new aquatic species will cause harm to human health, safety, or the environment;

(2) the likelihood that the nonindigenous new aquatic species will cause significant harm to the economy;

(3) the magnitude of the potential adverse impact of the nonindigenous new aquatic species upon public health, safety, the environment, native biodiversity, water bodies, outdoor recreation, or any other use of the state's water resources;

(4) the likelihood that the nonindigenous new aquatic species would naturalize in the state if not immediately controlled;

(5) the rate at which the invasion would spread throughout the state; and

(6) the difficulty to control the spread of the nonindigenous new aquatic species in the state.

§ 1457. ENTRANCE UPON LANDS TO PREVENT THE INTRODUCTION AND SPREAD OF NEW AQUATIC SPECIES

(a) The aquatic nuisance control program shall take reasonable steps to prevent the introduction and spread of new aquatic species that may become invasive in the state. To accomplish this objective, the secretary or his or her agent may, after first obtaining the permission of the landowner or occupant, enter upon lands for the following purposes:

(1) to survey for, inspect, or investigate conditions relating to new aquatic species that may become invasive;

(2) to collect information to issue coverage under rapid response general permits under section 1456 of this title;

(3) to conduct or use control techniques that are available under or authorized by a rapid response general permit issued under section 1456 of this title; and

(4) to determine whether the rules of the agency adopted or issued under this chapter are being complied with.

(b) If a land owner refuses to grant the secretary or his or her agent permission to enter onto the owner's land under this section, the secretary or the duly authorized representative of the secretary may apply for and obtain a warrant or subpoena to allow such entry, surveying, collection, and control as is necessary to protect human health, safety, and the environment or prevent economic loss.

§ 1458. GRANT-IN-AID TO MUNICIPALITIES AND AGENCIES OF THE STATE

(a) A municipality or agency of the state which desires state assistance to control aquatic nuisances may apply in writing to the agency of natural resources in a manner prescribed by the agency of natural resources.

(b) When the agency finds that a proposed aquatic nuisance control program is suitable to control or minimize the effect an aquatic nuisance has on water quality and water use, it may award a grant of 75 percent or less of the project costs as determined by the agency. Recurring maintenance projects may be awarded grants of 75 percent or less of the annual project cost. In approving requests and determining the amount of any grant, the agency shall consider the following:

(1) the use of the waters by persons outside the municipality in which the waters are located;

(2) the long-range effect of the control project;

(3) the recreational use of the waters; and

(4) the effectiveness of municipal shoreland zoning and other controls in minimizing or preventing existing or new development from having any adverse effects on the waters subject to the control program.

(c) The agency shall make awards to priority projects to the extent funds are available. First priority shall be projects to manage incipient infestations of aquatic nuisances, second priority shall be projects to prevent or control the further spread of aquatic nuisances, and third priority shall be recurring maintenance projects. In establishing priorities for individual projects, the agency shall consider the following:

(1) public accessibility and recreational uses;

- (2) the importance to commercial, agricultural, or other interests;
- (3) the degree of local interest, as manifested by municipal or other contributions to the project;
- (4) local efforts to control aquatic nuisances;
- (5) other considerations affecting feasibility, probability of achieving long-term control, and necessity or advantage of the proposed work; and
- (6) the extent to which the control project is a developmental rather than a maintenance program.

(d) With the approval of the secretary, the agency may use funds provided under this section as well as other funds for restoration, management, or protection projects or for studies in the best interests of the state when the appropriate municipal applicant is not available or not eligible to receive a grant.

(e) When the agency finds that a proposed aquatic nuisance control program is necessary and involves construction or installation of permanent facilities designed to control or minimize the effect that an aquatic nuisance has on water quality or water use, it may award a grant of up to 50 percent of the nonfederal costs of the project provided that evidence is received that the project applicant has voted funds in a specific amount to undertake the project. The applicant shall demonstrate it has or will acquire adequate interests in the site of the project to provide undisturbed possession and use during the life of the project and shall demonstrate ability to operate and maintain the project. The applicant may enter into agreements with the agency for prosecution of all or any portion of the project. For purposes of this subsection, corporations registered with the secretary of state may be eligible applicants.

(f) The agency may make periodic grant payments upon submission by the grantee showing that costs for which reimbursement is requested have been incurred and paid by the grantee. Partial payments shall be made not more frequently than monthly. After the project has been completed and its costs audited by the agency, the agency shall certify the remainder of the award to the commissioner of finance and management who shall issue his or her warrant for payment. Interest costs incurred in local short-term borrowing of the grant amount may be reimbursed as part of the grant.

§ 1459. JOINT MUNICIPAL PARTICIPATION

Should the shorelands of waters for which funds are requested under sections 1451–1460 of this title be under more than one municipal governmental jurisdiction, the provisions herein shall apply to the respective

municipalities under a joint application, except that the required municipal contribution shall be apportioned among the respective municipalities.

§ 1460. RULEMAKING

The secretary may adopt rules to implement the requirements of this chapter.

Sec. 2. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

(1) [Deleted.]

(2) 10 V.S.A. chapter 23, relating to air quality;

(3) 10 V.S.A. chapters 37, 47, and 56, relating to water pollution control, water quality standards, water resources management, and public water supply;

(4) 10 V.S.A. chapters 41 and 43, relating to dams and stream alterations;

(5) 10 V.S.A. chapter ~~37~~ 50, relating to the control of aquatic species and introduction of algicides, pesticides, and herbicides;

* * *

Sec. 3. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

(A) chapter 23 (air pollution control).

(B) ~~section 922~~ chapter 50 (aquatic ~~nuisance~~ species control grants in aid).

* * *

Sec. 4. REPEAL

Sections 921, 922, 923, 924, 1263a, and 1266 of Title 10 are repealed on the effective date of chapter 50 of Title 10.

Sec. 5. 23 V.S.A. § 3305(k) is amended to read:

(k) The commissioner shall enclose with every permanent and temporary motorboat registration and registration renewal certificate issued pursuant to this chapter the following a statement: ~~“I. Transporting zebra mussels, or Eurasian milfoil to or from any Vermont water surface is illegal (10 V.S.A. § 1266).~~

~~“II. If your boat or equipment is exposed to Lake Champlain or any other zebra mussel or Eurasian milfoil infested water, the following steps should be taken prior to putting your boat or equipment in another Vermont lake, pond or other water body:~~

~~“A. Inspect for and scrape off from your boat’s hull or equipment or any exposed areas any visible mussels or milfoil.~~

~~“B. Carefully flush with clean water all boat hulls, outdrive, live wells, bilge, trailers, anchors, ropes, bait buckets, raw engine cabling systems, and other boat parts or equipment.~~

~~“C. Dry boats, trailers, and equipment thoroughly in the sun.” , based on current aquatic nuisance threats and spread prevention methods, regarding the danger of aquatic nuisances, how aquatic nuisance species are spread, and how spread of aquatic nuisance species may be controlled.~~

Sec. 6. 23 V.S.A. § 3305b is amended to read:

§ 3305b. BOATING SAFETY EDUCATION; RULES

(a) When required. A person born after January 1, 1974 shall not operate a motorboat on the public waters of this state without first obtaining a certificate of boating education.

(b) Possession of certificate. A person who is required to have a certificate of boating education shall:

(1) possess the certificate when operating a motorboat on the public waters of the state; and

(2) show the certificate on the demand of an enforcement officer wearing insignia identifying him or her as such or operating a law enforcement motorboat or vessel. However, no person charged with violating this subsection shall be convicted if the person produces in court, to the officer, or to a state’s attorney a certificate which was valid at the time the violation occurred.

(c) Exemptions. The following persons are exempt from the requirements of this section:

(1) a person who is licensed by the United States Coast Guard to operate a vessel for commercial purposes;

(2) a person operating a vessel on a body of water located on private property; and

(3) any other person exempted by rules of the department of public safety.

(d) Rules. The department of public safety shall:

(1) adopt rules that establish criteria for a course of instruction in boating safety education;

(2) adopt rules relating to transient boaters and persons who hire chartered vessels;

(3) administer a verbal test when appropriate;

(4) coordinate a statewide program of boating safety instruction and certification and ensure that a course of boating safety education is available within each county; ~~and~~

(5) ensure that a course of boating safety education is available at the earliest practicable age for children; and

(6) ensure that the course includes an educational component regarding the environmental harm caused by aquatic nuisance species and how the spread of such species may be controlled when boaters follow specific steps to clean boats and trailers after use in state waters.

(e) Hours of instruction. Any course of boating safety education that is offered shall provide a minimum of eight hours of instruction.

(f) Persons offering courses. The following persons may offer the course of instruction in boating safety education if approved by the department of public safety:

(1) the department of public safety;

(2) the United States Coast Guard Auxiliary;

(3) the United States Power Squadron;

(4) a political subdivision;

(5) a municipal corporation;

(6) a state agency;

(7) a public or nonpublic school;

(8) any group, firm, association, or person.

(g) Issuance of certificate. The department of public safety or its designee, shall issue a certificate of boating safety education to a person who:

(1) passes the departmentally prescribed course in boating safety education; or

(2) passes a boating safety equivalency examination administered by persons authorized to offer the course on boating safety education.

(h) Education materials. Upon request, the department of public safety shall provide, without charge, boating safety education materials to persons who plan to take the boating safety equivalency examination.

(i) Lifetime issuance. Once issued, the certificate of boating safety education is valid for the lifetime of the person to whom it was issued and may not be revoked by the department of public safety or a court of law.

(j) Certificate replacement. The department of public safety shall replace, without charge, a lost or destroyed certificate if the department issued the certificate or has a record that the certificate was issued.

(k) Out-of-state certificate. A boating safety certificate issued in another state or country in accordance with or substantially equivalent to criteria of the National Association of State Boating Law Administrators is sufficient to comply with the requirements of this section.

Sec. 7. 23 V.S.A. § 3319 is amended to read:

§ 3319. FEES COLLECTED; SPECIAL FUND

(a) There is hereby established a special fund to be known as the motorboat registration fund for the purposes of ensuring that the fees and penalties collected under this subchapter are utilized in the protection and maintenance of the state's water resources. Any interest earned on the monies in this fund will be deposited in the general fund.

(b) The fees and penalties collected under the provisions of this subchapter, excluding surcharges collected under subsection 3305(b) and subdivisions 3305(c)(3)(A) and (B) of this title, shall be deposited in the motorboat registration fund and shall be allocated as follows:

(1) 15 percent to the department of public safety, to be used for enforcement of this subchapter and implementation of a boating safety education program;

(2) 50 percent to the department of fish and wildlife, to be used: to match federal funds; for upgrading and expanding boating access areas and

facilities located at those areas; for developing and constructing new boating access areas; and for facilitating or establishing and maintaining pump out stations, which may be, in the discretion of the commissioner, constructed or operated either by the department or on a contractual basis by a private person or entity. Users shall be charged reasonable and appropriate fees;

(3) 25 percent to the department of environmental conservation for the purpose of aquatic nuisance control pursuant to ~~10 V.S.A. §§ 921, 922, 923, and 1263a~~ chapter 50 of Title 10;

(4) 10 percent to the agency of agriculture, food and markets for the purpose of mosquito control pursuant to 6 V.S.A. chapter 85.

(c) The surcharges collected under subsection 3305(b) and subdivisions 3305(c)(3)(A) and (B) of this title shall be credited to the special fund established under subdivision (b)(3) of this section for the purpose of an aquatic nuisance control grant program pursuant to ~~sections 921, 922, and 923~~ chapter 50 of Title 10.

Sec. 8. AGENCY OF NATURAL RESOURCES EDUCATIONAL MATERIALS

Educational materials prepared by the agency of natural resources after July 1, 2009 regarding water pollution, use of state waters, hunting, or fishing shall include information regarding the environmental harm caused by aquatic nuisance species and how the spread of such species may be controlled when boaters and other users of state waters follow specific steps to clean boats, trailers, and other equipment after use in state waters.

Sec. 9. DEPARTMENT OF TOURISM AND MARKETING

All brochures prepared by the department of tourism and marketing after July 1, 2009 that address or relate to the use of state surface waters shall include information regarding the environmental harm caused by aquatic nuisance species and how the spread of such species may be controlled when boaters and other users of state waters follow specific steps to clean boats, trailers, and other equipment after use in state waters.

Sec. 10. AGENCY OF NATURAL RESOURCES REPORT ON FINANCING OF AQUATIC NUISANCE CONTROL

On or before January 15, 2010, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the funding of aquatic nuisance control activities in the state. The report shall include:

(1) A summary of the existing funding available for aquatic nuisance control activities in the state;

(2) A summary of the demand for aquatic nuisance control activities and the demand for funds to finance such activities;

(3) Recommended user fees, permit fees, or other financial mechanisms that could be utilized to fund the demand for aquatic nuisance control activities in the state.

Sec. 11. EFFECTIVE DATE

(a) This section and Secs. 8 (ANR materials), 9 (department of tourism and marketing materials), and 10 (ANR report on financing aquatic nuisance control) of this act shall take effect July 1, 2009.

(b) Secs. 1 (ANR aquatic nuisance control chapter), 2 (ANR enforcement), 3 (ANR appeals), 4 (repeal of existing aquatic nuisance control authority), 5 (agency of transportation aquatic nuisance educational materials), 6 (boating safety rules educational materials) and 7 (special fund for motor vehicle registration) of this act shall take effect July 1, 2010.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Fish, Wildlife & Water Resources agreed to and third reading ordered.

Speaker Smith back in Chair.

Bill Amended; Third Reading Ordered

H. 80

Rep. Webb of Shelburne, for the committee on Fish, Wildlife & Water Resources, to which had been referred House bill, entitled

An act relating to the use of chloramine as a disinfectant in public water systems

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds and declares that the disinfection of public water supplies is acknowledged to be one of the most significant public health accomplishments of all time, and that:

(1) The Champlain water district is the first water system in Vermont to use the disinfectant known as chloramine;

(2) Before using chloramine, the Champlain water district was in compliance with the U.S. Environmental Protection Agency Stage 1 regulations for disinfectants and disinfectant byproducts in public water supplies, which are in effect until October 1, 2012;

(3) Since the Champlain water district began the use of chloramine as a disinfectant in April 2006, more than 80 people who use Champlain water district water have reported adverse human health effects, including rashes, respiratory problems, and digestive problems;

(4) It has been reported that people using water from the Champlain water district cannot filter out all the chemical byproducts;

(5) It has been reported that doctors lack sufficient studies to make diagnoses of the public health effect of chloramine in public water supplies;

(6) There have been no Vermont epidemiological studies on the dermal, respiratory, and digestive effects of human exposure to chloraminated drinking water;

(7) There is considerable controversy about whether the Champlain water district, the department of health, and the department of environmental conservation have adequately responded to the public health concerns raised by the use of chloramine;

(8) The agency of natural resources and the department of health should work together to review the health and safety of the use of chloramine as a disinfectant and make efforts to enhance the response to public health concerns raised by individuals alleging harm to health due to the use of chloramine as a disinfectant.

Sec. 2. 10 V.S.A. § 1675 is amended to read:

§ 1675. PERMITS; CONDITIONS; DURATION; SUSPENSION OF
REVOCATION

(a) Authority to issue, renew, or deny permit. The secretary may issue, renew, or deny a public water system permit required by this chapter. As part of this authority, the secretary may issue general operating permits for the operation of transient noncommunity water systems.

(b) Avoidance of public health hazard or risk. A public water system permit shall be issued or renewed only upon a finding by the secretary, included in the permit, that operation of the system will comply with the standards adopted under this chapter and will not constitute a public health hazard or a significant public health risk.

(1) In making this finding for the issuance of a permit for a new public water source, the secretary shall consider the probable effects of existing and likely future land use practices, including the effects of the uses of agricultural lands, that may affect the quantity or quality of the water associated with any proposed public water source, and whether such practices are likely to constitute a public health hazard relating to such source. The secretary shall not issue a permit for a new public water source if he or she determines that such existing or likely future land use practices are likely to constitute such a public health hazard.

(2) In making this finding for the issuance of a permit for ~~the addition of a new type of~~ change in type of disinfectant, the secretary shall, after consultation with the department of health, consider the likely effects on health from ~~the use of the new type of~~ a change in type of disinfectant. The secretary shall not issue a permit for a new or existing public water system if he or she determines that ~~use of a new type of disinfectant~~ the change in the type of disinfectant used will result in a health effect that is likely to constitute a public health hazard. For the purposes of this section, a change in the type of disinfectant used by a public water system does not include increased or decreased dosage of a previously permitted disinfectant.

(c) Notice and hearing.

* * *

(2) The secretary shall give notice to the public of each application by a public community system for the ~~addition of a new type of~~ change in type of disinfectant to be used. Notice shall be by publication in a newspaper of general circulation for the area containing the ~~proposed~~ public water system and by ~~causing a notice to be~~ posted in the clerk's office for the municipality in which the system is located. The secretary shall also give notice to appropriate state agencies. The secretary shall provide an opportunity for written comment and shall, upon request, provide for a public hearing on the application before ruling on the application. The secretary may require the applicant to submit additional information which the secretary considers necessary in order to support the findings required in subsection (b) of this section, and may refuse to grant a permit until the information is furnished and evaluated. The secretary may also consult with the commissioner of health, as necessary, in making decisions regarding health issues raised by the application. The commissioner's response, if any, shall be part of the public record for the application.

* * *

Sec. 3. CHLORAMINE PUBLIC HEALTH IMPACT REVIEW

(a) The secretary of natural resources, in consultation with the department of health and the Champlain water district, shall review the public health impact of the use of chloramine and shall continue to consult with the users of the Champlain water district whose health has allegedly been adversely impacted by the use of chloramine as a disinfectant chemical in the water supply of the Champlain water district.

(b) On or before January 15, 2010, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, the house committee on human services, and the senate committee on health and welfare with the information generated or collected under the requirements of subsection (a) of this section. The report shall also include a summary of the U.S. Environmental Protection Agency's literature survey of the health impact of chloramine as a disinfectant.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Fish, Wildlife & Water Resources agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 94

Rep. Fagan of Rutland City, for the committee on Fish, Wildlife & Water Resources, to which had been referred House bill, entitled

An act relating to the collection and recycling of mercury-added lamps

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 7115 is amended to read:

§ 7115. RULEMAKING

(a) The secretary of the agency of natural resources is authorized to adopt rules necessary to implement this chapter.

(b) The secretary of natural resources may adopt rules or procedures to establish mercury content standards for lamps. If the secretary adopts standards governing mercury content, the standards shall rely upon content standards established in California. If one or more categories of lamps are not covered by the California mercury content standards, the secretary may adopt standards minimizing the mercury content of lamps within such categories, including adoption of a no-mercury standard when non-mercury alternatives are available at comparable cost. Before adopting or amending any standards under this subsection the secretary shall consider mercury reduction controls in other states.

Sec. 2. 10 V.S.A. § 7113(b) is amended to read:

(b) The advisory committee shall be terminated on January 1, ~~2010~~ 2015, unless extended by the general assembly.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Fish, Wildlife & Water Resources agreed to and third reading ordered.

Action on Bill Postponed

H. 147

House bill, entitled

An act relating to the operation of a motor vehicle by junior operators and primary safety belt enforcement

Was taken up and pending the reading of the report of the committee on Judiciary, on motion of **Rep. Grad of Moretown**, action on the bill was postponed until March 31, 2009.

Bill Amended; Third Reading Ordered

H. 205

Rep. Townsend of Randolph, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to reporting to the Vermont criminal justice training council

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 2362 is amended to read:

§ 2362. REPORTS

(a) Within five working days:

(1) Town, village, and city clerks shall ~~report to~~ notify the council, ~~within five working days, any issuance, termination, revocation or alteration in the terms of appointment of any law enforcement officer or~~ on a form provided by the council, of the election or, appointment to fill a vacancy under section 963 of Title 24, expiration of term, or reelection of any constable.

(2) The legislative body of a municipality or its designee shall notify the council of the appointment or removal of a constable or police chief.

(3) A police chief appointed under section 1931 of Title 24 shall notify the council of the appointment or removal of a police officer under the police chief's direction and control.

(4) The appointing authority of a state agency employing law enforcement officers shall notify the council of the appointment or removal of a law enforcement officer employed by that agency.

(5) A sheriff shall notify the council of the appointment or removal of a deputy or other law enforcement officer employed by that sheriff's department.

(b) ~~The report~~ Notification required by this section shall ~~contain~~ include the name of the ~~officer or~~ constable, police chief, police officer, deputy, or other law enforcement officer, the date of appointment or ~~election~~ removal, ~~if a constable~~, and the term of office or length of appointment, if any.

Sec. 2. 24 V.S.A. § 1931(c) is added to read:

(c) The legislative body or town manager shall report the creation of a new police department or the elimination of an existing police department to the Vermont criminal justice training council within five working days of the creation or elimination. The report shall include the effective date of creation or elimination, the mailing address for the police department, and the name of the appointed police chief.

Sec. 3. VERMONT CRIMINAL JUSTICE TRAINING COUNCIL;
NOTIFICATION

On or before August 1, 2009, the Vermont criminal justice training council shall notify all municipal clerks, municipal legislative bodies, sheriffs, and commissioners of state agencies employing law enforcement officers of the requirements set forth in this act.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Government Operations agreed to and third reading ordered.

Favorable Report; Third Reading Ordered

H. 186

Rep. Higley of Lowell, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to authorizing the department of fish and wildlife to administer polygraph examinations to applicants for law enforcement positions

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Adjournment

At two o'clock and forty-five minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at one o'clock in the afternoon.