

# Journal of the Senate

WEDNESDAY, FEBRUARY 24, 2010

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Message from the House No. 25

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 524.** An act relating to interference with or cruelty to a guide dog.

**H. 763.** An act relating to establishment of an agency of natural resources' river corridor management program.

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

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

**H.C.R. 245.** House concurrent resolution congratulating the League of Women Voters on its 90th anniversary.

**H.C.R. 246.** House concurrent resolution honoring book artist Lucy Swope of West Fairlee.

**H.C.R. 247.** House concurrent resolution honoring Lyndon Corey for his half-century of remarkable leadership and service at the Fairfield Fire Department.

**H.C.R. 248.** House concurrent resolution congratulating Healthy Living Natural Foods Market of South Burlington on winning the Vermont Grocers' Association Retailer of the Year award.

**H.C.R. 249.** House concurrent resolution honoring Theodore Manazir for his exemplary 29 years of public service as a member of the South Burlington school board upon his retirement from the board.

**H.C.R. 250.** House concurrent resolution honoring the exemplary performance of the volunteer fire departments of Sheldon, Swanton, Enosburg, Cambridge, Fairfield, Highgate, and St. Albans Town in combating the August 2009 RockTenn Mill blaze in Sheldon Springs.

**H.C.R. 251.** House concurrent resolution in memory of Shoreham firefighter Peter James Coe.

**H.C.R. 252.** House concurrent resolution celebrating the 25th anniversary of the inauguration of Vermont's first woman governor, Madeleine May Kunin.

**H.C.R. 253.** House concurrent resolution congratulating the 2009 Black River High School Presidents boys' soccer team on winning the school's third consecutive Division IV championship.

**H.C.R. 254.** House concurrent resolution in memory of Colchester Selectman Brian William McNeil.

**H.C.R. 255.** House concurrent resolution honoring the towns and citizens of Dover, Whitingham, and Wilmington for their creativity in establishing a mutually beneficial economic development model that other communities can adopt.

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

#### **Bill Introduced**

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

#### **S. 291.**

By Senator Campbell,

An act relating to mediation in foreclosure proceedings.

To the Committee on Judiciary.

#### **Bills Referred**

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

#### **H. 524.**

An act relating to interference with or cruelty to a guide dog.

To the Committee on Judiciary.

**H. 763.**

An act relating to establishment of an agency of natural resources' river corridor management program.

To the Committee on Natural Resources and Energy.

**Third Reading Refused****S. 289.**

Senate committee bill entitled:

An act relating to approval for continued operation of the Vermont Yankee nuclear power station.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator Scott, moved to commit the bill to the Committee on Economic Development, Housing and General Affairs, which was disagreed to on a roll call, Yeas 6, Nays 24.

Senator Scott having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Brock, Flory, Mazza, Mullin, Scott, Starr.

**Those Senators who voted in the negative were:** Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Thereupon, pending the question, Shall the bill be read a third time?, on motion of Senator Shumlin the Senate recessed until one o'clock and forty-five minutes.

**Called to Order**

At two o'clock in the afternoon the Senate was called to order by the President.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Mullin, Brock, Flory and Scott move to amend the bill as follows:

First: In Sec. 1, by striking out subsections (d) through (f) and inserting in lieu thereof the following:

(d) Under current law, until the general assembly acts under 30 V.S.A. § 248(e)(2), the public service board – the expert body created by the general assembly to make evidence-based determinations on matters relating to electric power – cannot issue a final order in its pending proceedings in Docket No. 7440 on the questions of continued operation of the VYNPS and storage of spent fuel at the station beyond the currently scheduled closure date.

(e) In accordance with 30 V.S.A. § 248, in its decision in the pending proceedings, the public service board will consider the need for electric energy from the VYNPS, the consistency of the station with state energy planning, the issues of reliability and electric system stability, the economic benefit of the VYNPS and the power it generates to the state and its residents, and the other criteria required by statute.

(f) The general assembly should make its determinations regarding the continued operation of the VYNPS and storage of spent fuel at the station so that the public service board may complete its ongoing proceedings, apply its professional expertise, and issue a final order in Docket No. 7440 that is based on the evidence before it.

Second: By striking out Secs. 2 and 3 and inserting in lieu thereof new Secs. 2 and 3 to read as follows:

Sec. 2. VERMONT YANKEE; CONTINUED OPERATION; APPROVAL

(a) Provided that each of the conditions contained in subsection (b) of this section is met, the general assembly:

(1) determines that continued operation of the Vermont Yankee Nuclear Power Station (VYNPS or the station) for up to 20 years following its currently scheduled closure date of March 21, 2012, will promote the general welfare of this state; and

(2) finds that storage of spent nuclear fuel derived from the operation of the VYNPS for up to 20 years following the currently scheduled closure date will promote the general good of this state.

(b) The general assembly approves until up to March 21, 2032, the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the operation of the station, provided that each of the following conditions is met:

(1) By March 1, 2011, Entergy Nuclear Vermont Yankee, LLC (ENVY), the station's owner, executes a power purchase agreement (PPA) with Vermont's two largest investor-owned retail electricity providers that, starting in 2012, commits at least 115 MW of the output of the VYNPS to such

providers for the period of continued operation of the station approved by the public service board at a price not to exceed 125 percent of the price currently paid by such providers under the existing PPA approved by the board in Docket No. 6545.

(2) By June 30, 2010, ENVY shall obtain approval from the Vermont public service board of an ongoing reliability and maintenance plan for the VYNPS that meets at least each of the following:

(A) The plan provides for a full inspection within six months of the plan's approval of all aboveground and underground structures, components, facilities and pipes, and periodic inspection of the same at a frequency deemed necessary by the Vermont department of health. For the purpose of this section, the term "underground" includes all structures, components, facilities, and pipes that are below grade whether they are in contact with earth or in a concrete vessel.

(B) The plan provides for prompt repair or replacement of all structures, components, facilities and pipes that are identified through an inspection under subdivision (2)(A) of this subsection as requiring repair or replacement.

(C) The plan ensures compliance with all recommendations of the Reliability Assessment of the Vermont Yankee Nuclear Facility (Nuclear Safety Associates, Dec. 22, 2008) and the Report of the Public Oversight Panel on the Comprehensive Reliability Assessment of the Vermont Yankee Nuclear Power Plant (March 17, 2009).

(3) ENVY shall implement the plan required by subdivision (2) of this subsection in accordance with the terms of the public service board's approval.

(4) ENVY shall be liable to pay, within 30 days of receipt of an invoice, the reasonable costs of the department of health, the department of public service, and the agency of natural resources in inspecting and monitoring the VYNPS. This liability shall continue after the VYNPS ceases operation with respect to inspection and monitoring of the condition of and postclosure activities at the VYNPS site and environs. In the event that the reasonableness of such costs is disputed, the public service board shall have jurisdiction to resolve such dispute.

(5)(A) By March 1, 2011:

(i) ENVY shall provide the public service board with the written agreement of Entergy Corporation of New Orleans, Louisiana (Entergy Corp.), the ultimate parent of ENVY, to guarantee the full funding of all postclosure activities necessary at the VYNPS, including decommissioning of the station,

on-site management of spent fuel, and return of the site to a “greenfield” condition as defined by the public service board in its order of June 13, 2002, Docket No. 6545; and

(ii) ENVY shall obtain, after notice and opportunity for hearing, the board’s approval of the form and terms of such guarantee.

(B) A refusal of Entergy Corp. to provide the guarantee required by this subdivision (5) shall be considered noncompliance by ENVY with this subdivision.

(6) Notwithstanding 30 V.S.A. § 107 or any other provision of law, the following is prohibited: a transfer of a controlling interest in ENVY or Entergy Nuclear Operations, Inc. (ENO), the operator of the station, unless each of the following applies:

(A) Entergy Corp. remains liable with respect to the guarantee required by subdivision (5) of this subsection.

(B) The new owner of ENVY or ENO or both makes the same guarantee required by subdivision (5) of this subsection and is independently liable with respect to that guarantee.

(7) From March 21, 2012, until the end of the period of continued operation of the VYNPS approved by the public service board, ENVY shall continue to fund the clean energy development fund established under 10 V.S.A. § 6523 in an annual amount determined acceptable by the board, to be no less than the amount paid by ENVY under memoranda of understanding with respect to the VYNPS approved by the board prior to January 1, 2010. ENVY shall obtain the public service board’s approval of such annual amount on or before March 1, 2011.

(8) The VYNPS shall obtain from the public service board and any other agencies such certificates, permits, and approvals related to continued operation of the VYNPS and storage of spent fuel at the VYNPS as are required by law.

(c) This act does not require the public service board to approve the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the continued operation of the VYNPS beyond March 21, 2012. However, if the board determines to issue such approval, the board shall include the conditions of subdivisions (b)(1) through (7) of this section in any such approval. The board may include such other conditions as it reasonably deems appropriate, including conditions that are more stringent than those required by subsection (b) of this section.

Sec. 3. EFFECTIVE DATE; APPLICATION TO PENDING PROCEEDINGS

(a) This act shall take effect on passage.

(b) The public service board may complete its pending proceedings in Docket No. 7440 and its consideration of all issues under the relevant statutes, including the need for electric energy from the VYNPS, the consistency of the station with state energy planning, reliability and electric system stability, and the economic benefit of the VYNPS and the power it generates to the state and its residents. The board may issue a final order in Docket No. 7440.

(c) Notwithstanding 1 V.S.A. §§ 213 and 214, this act shall apply to proceedings pending before the public service board as of this act's effective date.

Which was disagreed to on a roll call, Yeas 5, Nays 25.

Senator Mullin having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Brock, Flory, Mullin, Scott, Starr.

**Those Senators who voted in the negative were:** Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Flory, Brock, Mullin and Scott move to amend the bill as follows:

First: In Sec. 1, by striking out subsections (d) through (f) and inserting in lieu thereof the following:

(d) Whether or not the VYNPS continues operation after March 21, 2012, the station will not operate indefinitely.

(e) Whenever the VYNPS ceases operation, its contribution to Vermont's energy supply – currently about one-third of the electricity consumed in the state – will need to be replaced.

(f) Replacement of VYNPS power is likely to increase reliance on the spot market for electric energy, therefore exposing the state to sudden and unanticipated price fluctuations that are beyond Vermonters' control, the threat of foreign imposed oil embargoes, and a potential increase in Vermont's

carbon footprint in a state proud to have the lowest carbon footprint in the nation.

(g) President Obama has proposed that the nation rejuvenate nuclear power in a new direction through the construction of new plants that are better constructed, more environmentally sensitive, and more efficient.

(h) President Obama has proposed that the federal fiscal year 2011 budget for the U.S. Department of Energy include an additional \$36 billion in loan guarantees for the construction of nuclear power plants, bringing the total allocated amount for this purpose to \$54 billion.

(i) The VYNPS site in Vernon contains sufficient space for a second nuclear power plant, and is an ideal location to build a new modern and physically more compact nuclear power plant that could replace the power the current plant generates upon completion of construction and issuance of a federal operating license and state certificate of public good, and serve Vermonters for decades into the future.

(j) Access to a reasonable portion of the federal loan guarantee money for the construction of new nuclear power plants would provide an ideal financial incentive for prospective owners.

(k) The public service board could open a docket to determine the entity to be the owner of a new nuclear plant that would include extremely detailed, professional and unbiased scrutiny of the financial and technical resources, and prior nuclear power industry history, of any potential owner.

(l) A full contingent of nuclear engineers and technicians is presently at work in Vernon.

(m) The Vermont economy needs to retain these jobs and needs the support for economic growth that would be achieved through the creation of new quality jobs at the VYNPS site.

Second: By striking out Secs. 2 and 3 in their entirety and inserting in lieu thereof new Secs. 2, 3 and 4 to read as follows:

**Sec. 2. ADDITIONAL NUCLEAR POWER PLANT AT VERNON, VERMONT**

(a) No later than March 1, 2011, the public service board shall issue a request for proposals and open and complete a docket to select a potential owner and operator of a second nuclear generation plant to be located in Vernon on the site of Vermont Yankee Nuclear Power Station (VYNPS). In selecting such an owner and operator, the board shall apply the same standards as it would apply under 30 V.S.A. § 231 to a person or entity desiring to own

or operate a business over which the board has jurisdiction, shall ensure compliance with state energy policy under 30 V.S.A. § 202a, and may consider such other factors as it deems relevant and appropriate. The board's review under this subsection shall include scrutiny of the financial and technical resources, and prior nuclear power industry history, of any such owner and operator.

(b) The owner and operator selected under subsection (a) of this section shall subsequently seek approval of a second nuclear generation plant at the site of the VYNPS under 30 V.S.A. § 248 and all other applicable statutes and regulations.

(c) The governor and commissioner of public service are directed to make every reasonable effort to:

(1) identify and work with potential owners and operators of a second nuclear plant at the site of the VYNPS;

(2) support approval of such a plant, provided that it conforms with applicable law and regulation; and

(3) advocate to Congress to reserve the amount of \$2 billion in federal loan guarantees for seed financial backing to construct such a second nuclear power plant at the site of the VYNPS.

(d) The general assembly urges the Vermont congressional delegation to make every reasonable effort to reserve the amount of \$2 billion in federal loan guarantees for seed financial backing to construct a second nuclear power plant at the site of the VYNPS.

### Sec. 3. VERMONT YANKEE; CONTINUED OPERATION; APPROVAL

(a) In light of Secs. 1 and 2 of this act, the general assembly:

(1) determines that continued operation of the Vermont Yankee Nuclear Power Station (VYNPS) following its currently scheduled closure date of March 21, 2012, will promote the general welfare of this state; and

(2) finds that storage of spent nuclear fuel derived from the operation of the VYNPS following its currently scheduled closure date will promote the general good of this state,

(3) provided that such continued operation and storage of spent fuel nuclear fuel are allowed only until such time as a second nuclear generation plant at the VYNPS goes into service or 10 years from the currently scheduled closure date, whichever is earlier.

(b) The general assembly approves the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the continued operation of the VYNPS provided that each of the following conditions is met:

(1) Such continued operation and storage of spent nuclear fuel are authorized only until the earlier of:

(A) the date a second nuclear generation plant at the VYNPS goes into service; or

(B) March 21, 2022.

(2) By March 1, 2011, Entergy Nuclear Vermont Yankee, LLC (ENVY), the station's owner, executes a power purchase agreement (PPA) with Vermont's two largest investor-owned retail electricity providers that, starting in 2012, commits at least 115 MW of the output of the VYNPS to such providers for the period of continued operation of the station approved by the public service board at a price not to exceed 125 percent of the price currently paid by such providers under the existing PPA approved by the board in Docket No. 6545.

(3) By June 30, 2010, ENVY shall obtain approval from the Vermont public service board of an ongoing reliability and maintenance plan for the VYNPS that meets at least each of the following:

(A) The plan provides for a full inspection within six months of the plan's approval of all aboveground and underground structures, components, facilities and pipes, and periodic inspection of the same at a frequency deemed necessary by the Vermont department of health. For the purpose of this section, the term "underground" includes all structures, components, facilities and pipes that are below grade whether they are in contact with earth or in a concrete vessel.

(B) The plan provides for prompt repair or replacement of all structures, components, facilities and pipes that are identified through an inspection under subdivision (2)(A) of this subsection as requiring repair or replacement.

(C) The plan ensures compliance with all recommendations of the Reliability Assessment of the Vermont Yankee Nuclear Facility (Nuclear Safety Associates, Dec. 22, 2008) and the Report of the Public Oversight Panel on the Comprehensive Reliability Assessment of the Vermont Yankee Nuclear Power Plant (March 17, 2009).

(4) ENVY shall implement the plan required by subdivision (3) of this subsection in accordance with the terms of the public service board's approval.

(5) ENVY shall be liable to pay, within 30 days of receipt of invoice, the reasonable costs of the department of health, the department of public service, and the agency of natural resources in inspecting and monitoring the VYNPS. This liability shall continue after the VYNPS ceases operation with respect to inspection and monitoring of the condition of and post-closure activities at the VYNPS site and environs. In the event that the reasonableness of such costs is disputed, the public service board shall have jurisdiction to resolve such dispute.

(6) (A) By March 1, 2011:

(i) ENVY shall provide the public service board with the written agreement of Entergy Corporation of New Orleans, Louisiana (Entergy Corp.), the ultimate parent of ENVY, to guarantee the full funding of all post-closure activities necessary at the VYNPS, including decommissioning of the station, on-site management of spent fuel, and return of the site to a "greenfield" condition as defined by the public service board in its order of June 13, 2002, Docket No. 6545; and

(ii) ENVY shall obtain, after notice and opportunity for hearing, the board's approval of the form and terms of such guarantee.

(B) A refusal of Entergy Corp. to provide the guarantee required by this subdivision (6) shall be considered noncompliance by ENVY with this subdivision.

(7) Notwithstanding 30 V.S.A. § 107 or any other provision of law, the following is prohibited: a transfer of a controlling interest in ENVY or Entergy Nuclear Operations, Inc. (ENO), the operator of the station, unless the each of the following applies:

(A) Entergy Corp. remains liable with respect to the guarantee required by subdivision (6) of this subsection.

(B) The new owner of ENVY or ENO or both makes the same guarantee required by subdivision (6) of this subsection and is independently liable with respect to that guarantee.

(8) From March 21, 2012, until the end of the period of continued operation of the VYNPS approved by the public service board, ENVY shall continue to fund the clean energy development fund established under 10 V.S.A. § 6523 in an annual amount determined acceptable by the public service board, to be no less than the amount paid by ENVY under memoranda of understanding with respect to the VYNPS approved by the board prior to January 1, 2010. ENVY shall obtain the public service board's approval of such annual amount on or before March 1, 2011.

(9) The VYNPS shall obtain from the public service board and any other agencies such certificates, permits, and approvals related to continued operation of the VYNPS and storage of spent fuel at the VYNPS as are required by law.

(c) This act does not require the public service board to approve the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the continued operation of the VYNPS beyond March 21, 2012. However, if the board determines to issue such approval, the board shall include the conditions of subdivisions (b)(1) through (8) of this section in any such approval. The board may include such other conditions as it reasonably deems appropriate, including conditions that are more stringent than those required by subsection (b) of this section.

#### Sec. 4. EFFECTIVE DATE; APPLICATION TO PENDING PROCEEDINGS

(a) This act shall take effect on passage.

(b) The public service board may complete its pending proceedings in Docket No. 7440 and its consideration of all issues under the relevant statutes, including the need for electric energy from the VYNPS, the consistency of the station with state energy planning, reliability and electric system stability, and the economic benefit of the VYNPS and the power it generates to the state and its residents. The board may issue a final order in Docket No. 7440.

(c) Notwithstanding 1 V.S.A. §§ 213 and 214, this act shall apply to proceedings pending before the public service board as of this act's effective date.

Which was disagreed to on a roll call, Yeas 6, Nays 24.

Senator Flory having demanded the yeas and nays, they were taken and are as follows:

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Brock, Carris, Flory, Mullin, Scott, Starr.

**Those Senators who voted in the negative were:** Ashe, Ayer, Bartlett, Campbell, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Thereupon, the pending question, Shall the bill be read a third time?, was disagreed to on a roll call, Yeas 4, Nays 26.

Senator Shumlin having demanded the yeas and nays, they were taken and are as follows:

### Roll Call

**Those Senators who voted in the affirmative were:** Flory, Mazza, \*Scott, Starr.

**Those Senators who voted in the negative were:** Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Mullin, Nitka, Racine, Sears, Shumlin, Snelling, White.

\*Senator Scott explained his vote as follows:

“There is no debate... Vermont Yankee has made bad decisions and has been a less than perfect partner with the State. Their breach of trust with people of Vermont leaves a terrible scar on their relationship with all of us. In my mind there are still many, many unanswered questions about whether we should relicense the plant for another 20 years.

Today, I and others have tried many avenues in order to be responsible and compromising before the final outcome ... to no avail.

I cannot stand by and vote to support a blatant political power play. My “yes” vote is to remind my colleagues that there is more at stake today than scoring political points. The future of 600 jobs, affordable power and the Vermont economy should not be decided in a rush to judgment. Unfortunately for the people of Vermont, politics came before a responsible process. This is not the way we should serve Vermonters. Vermonters deserve better.”

### Message from the House No. 26

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

Mr. President:

I am directed to inform the Senate that:

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

**H. 533.** An act relating to military parents’ rights.

And has severally concurred therein.

**Message from the House No. 27**

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 607.** An act relating to codifying and amending the charter of the Chittenden County Transportation Authority.

**H. 622.** An act relating to solicitation by prescreened trigger lead information.

**H. 761.** An act relating to authorization of High-Speed Intercity Passenger Rail Program grants.

**H. 765.** An act relating to establishing the Vermont agricultural innovation authority.

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

**Adjournment**

On motion of Senator Shumlin, the Senate adjourned until eleven o'clock in the morning.