

Journal of the House

Thursday, March 15, 2012

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

Devotional Exercises

Devotional exercises were conducted by Rev. Glen Carter of the Jericho Congregational Church, Jericho, VT.

Message from the Senate No. 26

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bill of the following title:

S. 251. An act relating to miscellaneous amendments to laws pertaining to motor vehicles.

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

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 50. Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges.

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

Committee Bill Introduced

H. 768

Rep. Lippert of Hinesburg, for the committee on Judiciary, introduced a bill, entitled

An act relating to ignition interlock restricted driver's licenses and civil suspensions

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Committee Bill Introduced**H. 769**

Rep. Ancel of Calais, for the committee on Ways and Means, introduced a bill, entitled

An act relating to department of environmental conservation fees

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Committee Bill Introduced**H. 770**

Rep. Brennan of Colchester, for the committee on Transportation, introduced a bill, entitled

An act relating to the state's transportation program

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Senate Bill Referred**S. 251**

Senate bill, entitled

An act relating to miscellaneous amendments to laws pertaining to motor vehicles;

To the committee on Transportation.

Joint Resolution Placed on Calendar**J.R.H. 30**

Joint resolution authorizing 2012 Green Mountain Girls' State to conduct a civic education program at the State House

Offered by: Representative Acinapura of Brandon

Whereas, for many years, the Vermont American Legion Auxiliary has sponsored the annual Green Mountain Girls' State (Girls' State) civic education program, and

Whereas, Girls' State enables young women in high school to gain a first-hand experience and understanding of state government's procedures in all three branches of government, and

Whereas, a highlight of Girls' State is the day at the State House, featuring mock legislative committee meetings and chamber debate on proposed bills that focus on leading public policy issues, and students shadowing senior officials in the executive and judicial branches, and

Whereas, legislative staff have offered their professional support services, helping the students gain a better appreciation of Vermont's legislative process, and

Whereas, in 2012, Girls' State is scheduled to convene at the State House on June 20, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly authorizes Green Mountain Girls' State to use the House and Senate chambers, the legislative committee meeting rooms, and the governor's ceremonial office on Wednesday, June 20, 2012, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont American Legion Auxiliary.

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

Joint Resolution Placed on Calendar

J.R.H. 31

Joint resolution urging Congress to designate March 29 as Vietnam Veterans Day

Offered by: Representatives Canfield of Fair Haven, Acinapura of Brandon, Andrews of Rutland City, Atkins of Winooski, Batchelor of Derby, Bissonnette of Winooski, Bouchard of Colchester, Branagan of Georgia, Brennan of Colchester, Browning of Arlington, Burditt of West Rutland, Buxton of Tunbridge, Cheney of Norwich, Christie of Hartford, Clark of Vergennes, Clarkson of Woodstock, Consejo of Sheldon, Copeland-Hanzas of Bradford, Courcelle of Rutland City, Crawford of Burke, Devereux of Mount Holly, Dickinson of St. Albans Town, Donaghy of Poultney, Donahue of Northfield, Eckhardt of Chittenden, Edwards of Brattleboro, Ellis of Waterbury, Evans of Essex, Fagan of Rutland City, French of Shrewsbury, Haas of Rochester, Head of South Burlington, Hebert of Vernon, Helm of Fair Haven, Higley of Lowell, Howrigan of Fairfield, Hubert of Milton, Jerman of Essex, Johnson of Canaan, Klein of East Montpelier, Koch of Barre Town, Komline of Dorset, Larocque of Barnet, Lawrence of Lyndon, Leriche of Hardwick, Lewis of Berlin, Lewis of Derby, Macaig of Williston, Malcolm of

Pawlet, Marcotte of Coventry, McFaun of Barre Town, McNeil of Rutland Town, Moran of Wardsboro, Myers of Essex, Pearce of Richford, Peltz of Woodbury, Perley of Enosburgh, Poirier of Barre City, Potter of Clarendon, Reis of St. Johnsbury, Russell of Rutland City, Savage of Swanton, Shaw of Pittsford, Stevens of Shoreham, Strong of Albany, Sweaney of Windsor, Taylor of Barre City, Till of Jericho, Turner of Milton, Winters of Williamstown, Wright of Burlington and Yantachka of Charlotte

Whereas, on March 29, 1973, the last 2,500 United States troops were withdrawn from South Vietnam, ending American military involvement in what was the longest war in our country's history, and

Whereas, the President designated March 29, 1974 as Vietnam Veterans Day, and

Whereas, the 58,195 honorable and brave souls who fought and died during the Vietnam War, the many who remain missing in action, and all those who have died since from the consequences of that war deserve the eternal gratitude and respect of our nation, and

Whereas, the men and women who served with dedication, honor, and pride during the Vietnam War era in Vietnam, elsewhere overseas, or in the United States merit special honor and recognition, and

Whereas, the families whose loved ones gave their lives for our country during the Vietnam War should always be in our thoughts, and

Whereas, many men and women came home from Vietnam with physical and emotional wounds, and their families are committed to a lifetime of care and support for their loved one, and these families should be honored, and

Whereas, the citizens who stood by and supported, without reservation, the families of the fallen as well as the Vietnam veterans who returned and their families all are worthy of praise, and

Whereas, the professionals and volunteers who committed themselves to the loving care and healing of the bodily and emotionally wounded from the Vietnam War are special individuals who deserve recognition, and

Whereas, allied personnel who served with dedication, honor, and pride alongside our nation's defenders during the Vietnam War deserve our respect and gratitude, and

Whereas, this expression of respect and gratitude for the service and sacrifice of Vietnam veterans and their families will give hope and assurance to current and future generations of our nation's defenders and their families that our nation will honor and remember their sacrifice, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to designate March 29 as Vietnam Veterans Day, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to members of the Vermont Congressional Delegation.

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

Joint Resolution Adopted in Concurrence

J.R.S. 50

By Senator Nitka,

J.R.S. 50. Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges.

Whereas, declarations have been submitted by the following three Superior Judges that they be retained for another six-year term, Judge Karen R. Carroll, Judge Dennis R. Pearson, Judge Barry Peterson, and

Whereas, the procedures of the Joint Committee on Judicial Retention require at least two public hearings and the review of information provided by each judge and the comments of members of the Vermont bar and the public, and

Whereas, the Committee was unable to fulfill its responsibilities under subsection 608(b) of Title 4 to evaluate the judicial performance of the judges seeking to be retained in office by March 8, 2012, the date specified in subsection 608(e) of Title 4, and for a vote in Joint Assembly to be held on March 15, 2012, the date specified in subsection 10(b) of Title 2, and

Whereas, subsection 608(g) of Title 4 permits the General Assembly to defer action on the retention of judges to a subsequent Joint Assembly when the Committee is not able to make a timely recommendation, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, March 29, 2012, at one o'clock in the afternoon to vote on the retention of three Superior Judges. In case the vote to retain said Justices and Judges shall not be made on that day, the two Houses shall meet in Joint Assembly at nine o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

Was taken up read and adopted in concurrence.

Rep. Leriche of Hardwick in Chair.

Bill Amended; Third Reading Ordered

H. 600

Rep. Koch of Barre Town, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to mandatory mediation in foreclosure proceedings

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

Sec. 1. 12 V.S.A. § 4631 is amended to read:

§ 4631. MEDIATION PROGRAM ESTABLISHED

* * *

(c) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the state and shall be required to have taken a the specialized, continuing legal education training course courses on foreclosure prevention or loss mitigation approved by the Vermont Bar Association. The court administrator, in consultation with the Vermont Bar Association, shall implement a system which ensures that the mediator is chosen through a randomized selection process in all mediations conducted pursuant to this chapter.

Sec. 2. 12 V.S.A. § 4632 is amended to read:

§ 4632. OPPORTUNITY TO MEDIATE

* * *

(b) The court shall hold a status conference no later than 90 days from the date that the mortgagor requested mediation, unless the mediator's report is filed with the court prior to such time.

(c) Unless the mortgagee agrees otherwise, all mediation shall be completed prior to the expiration of the redemption period. The redemption period shall not be stayed on account of pending mediation.

~~(e)~~(d) In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, the mortgagee shall serve upon the mortgagor two copies of the notice described in subsection ~~(d)~~(e) of this section with the summons and complaint. The supreme court may by rule consolidate this notice with other

foreclosure-related notices as long as the consolidation is consistent with the content and format of the notice under this subsection.

~~(d)~~(e) The notice required by subsection ~~(e)~~(d) of this section shall:

- (1) be on a form approved by the court administrator;
- (2) advise the homeowner of the homeowner's rights in foreclosure proceedings under this subchapter;
- (3) state the importance of participating in mediation even if the homeowner is currently communicating with the mortgagee or servicer;
- (4) provide contact information for legal services; and
- (5) incorporate a form that can be used by the homeowner to request mediation from the court.

~~(e)~~(f) The court may, on motion of a party, find that the requirements of this subchapter have been met and that the parties are not required to participate in mediation under this subchapter if the mortgagee files a motion and establishes to the satisfaction of the court that it has complied with the applicable requirements of HAMP and supports its motion with sworn affidavits that:

- (1) include the calculations and inputs required by HAMP and employed by the mortgagee; and
- (2) demonstrate that the mortgagee or servicer met with the mortgagor in person or via videoconferencing or made reasonable efforts to meet with the mortgagor in person.

Sec. 3. 12 V.S.A. § 4633 is amended to read:

§ 4633. MEDIATION

(a) During all mediations under this subchapter:

(1) ~~the~~ The parties shall address proof of ownership of the note and any transfers of the note; calculation of the sums due on the note for the principal, interest, and costs or fees; and all available foreclosure prevention tools.

(2) The mortgagee shall use and consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale, and the calculations, assumptions, and forms established by the HAMP guidelines, including all HAMP-related "net present value" calculations in considering a loan modification conducted under this subchapter;

~~(2)~~(3) ~~the~~ The mortgagee shall produce for the mortgagor and mediator documentation of its consideration of the options available in this subdivision and subdivision (1) of this subsection, including the data used in and the outcome of any HAMP-related “net present value” calculation; ~~and~~

~~(3)~~(4) ~~where~~ Where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement. All agreement documents shall be confidential and shall not be included in the mediator’s report.

* * *

Sec. 4. 12 V.S.A. § 4634(a) is amended to read:

(a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court ~~and, to both parties, and to the department of banking, insurance, securities, and health care administration.~~

Sec. 5. FORECLOSURE MEDIATION PROGRAM STUDY COMMITTEE

(a) Creation of committee. There is created a foreclosure mediation program study committee to consider appropriate measures for Vermont to take in response to the anticipated repeal of the state foreclosure mediation program when the federal Home Affordable Modification Program (“HAMP”) is repealed on December 3, 2013.

(b) Membership. The foreclosure mediation program study committee shall be composed of seven members. The members of the committee shall be as follows:

(1) The administrative judge or designee.

(2) The attorney general or designee.

(3) The commissioner of banking, insurance, securities, and health care administration or designee.

(4) One member appointed by the Vermont Bar Association.

(5) One member appointed by Vermont Legal Aid.

(6) One member appointed by the Vermont Bankers Association.

(7) One member with experience as a mediator in foreclosure proceedings appointed by the Vermont Bar Association.

(c) Powers and duties. The committee shall study whether changes in state law and policy should be made in response to the anticipated repeal of

Vermont's foreclosure mediation program when the federal HAMP is repealed on December 3, 2013. The committee's study shall include consideration of:

(1) the impacts of the anticipated repeal of Vermont's foreclosure mediation program and any measures that would be advisable for Vermont to take in response to the repeal;

(2) whether the Vermont foreclosure mediation program should be amended to be consistent with national settlements or standards, and whether a state foreclosure mediation program is necessary in light of such national settlements or standards;

(3) whether the mortgagee or the mortgagee's attorney should be required to be physically present at the proceeding; and

(4) whether the mediation proceeding should address all issues related to the foreclosure.

(d) Report. The committee shall report its findings and recommendations, together with draft legislation if any legislative action is recommended, to the general assembly on or before December 1, 2012.

Sec. 6. 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 mediation in foreclosure proceedings"

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the report of the committee on Judiciary be agreed to? **Rep. Wizowaty of Burlington** moved to amend the report of the committee on Judiciary as follows:

By adding a new Sec. 1 to read:

Sec. 1. INTENT

By use of the term "mediation" in the present context, the General Assembly does not intend to alter the procedures that are applicable in mediations in other contexts or to modify in any way the model standards of conduct for mediators adopted by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution.

and by renumbering the remaining sections to be numerically correct.

Which was agreed to.

Thereupon, the report of the committee on Judiciary, as amended, was agreed to and third reading ordered.

Bill Amended, Read Third Time and Passed

H. 523

House bill, entitled

An act relating to revising the state highway condemnation law

Was taken up and pending third reading of the bill, **Rep. Krebs of South Hero** moved to amend the bill as follows:

First: In Sec. 2, § 502, subsection (a), in the second sentence, by inserting “, after making reasonable efforts to provide the owner advance notice of such entry,” after “lands”.

Second: In Sec. 2, § 506, subsection (d), by inserting a new sentence to be the first sentence of that subsection to read “Upon the agency’s recording of the condemnation order or notice, the clerk with responsibility over land records shall enter the name of each property owner named in the order or notice as a grantor in the general index of transactions affecting the title to real estate.”

Rep. Krebs of South Hero asked that the question be divided.

Thereupon, **Rep. Kerbs of South Hero** asked and was granted leave of the House to withdraw the first recommendation of amendment, the second recommendation of amendment was agreed to and the bill was read the third time and passed.

Third Reading; Bills Passed

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

H. 37

House bill, entitled

An act relating to telemedicine

H. 764

House bill, entitled

An act relating to health insurance brokers’ fees

H. 765

House bill, entitled

An act relating to the mental health needs of the corrections population

J.R.H. 27

Joint resolution, entitled

Joint resolution supporting the Vermont State Hospital employees

Bill Amended; Third Reading Ordered**H. 272**

Rep. Kupersmith of South Burlington, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

An act relating to maintenance of private roads

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

Sec. 1. 19 V.S.A. chapter 27 is added to read:

CHAPTER 27. PRIVATE ROADS

§ 2701. INTENT

The intent of this chapter is to state the responsibilities for the maintenance of a private road, in the absence of an express agreement or requirement governing such maintenance responsibilities, in accordance with the Vermont supreme court decision of *Hubbard v. Bolieau*, 144 Vt. 373 (1984), which draws upon established principles of Vermont law. This chapter will only apply to resolve conflicts regarding maintenance of private roads in the absence of an express agreement or requirement. The provisions of this chapter are not intended to abridge, enlarge, or modify any right provided under *Hubbard* and the common law of Vermont.

§ 2702. PRIVATE ROAD MAINTENANCE

In the absence of an express agreement or requirement governing maintenance of a private road, when more than one person enjoys a common benefit from a private road, each person shall contribute rateably to the cost of maintaining the private road, and shall have the right to bring a civil action to enforce the requirement of this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

The bill, having appeared on the Calendar one day for notice, was taken up, and read the second time.

Pending the question, Shall the bill be amended as recommended by the Committee on Commerce and Economic Development? **Rep. Kupersmith of**

South Burlington demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as recommended by the Committee on Commerce and Economic Development? was decided in the affirmative. Yeas, 139. Nays, 0.

Those who voted in the affirmative are:

Acinapura of Brandon	Ellis of Waterbury	Malcolm of Pawlet
Ancel of Calais	Emmons of Springfield	Manwaring of Wilmington
Andrews of Rutland City	Evans of Essex	Marcotte of Coventry
Aswad of Burlington	Fagan of Rutland City	Marek of Newfane
Atkins of Winooski	Fisher of Lincoln	Martin of Springfield
Bartholomew of Hartland	Frank of Underhill	Martin of Wolcott
Batchelor of Derby	French of Shrewsbury	Masland of Thetford
Bissonnette of Winooski	French of Randolph	McAllister of Highgate
Bohi of Hartford	Gilbert of Fairfax	McCullough of Williston
Botzow of Pownal	Greshin of Warren	McFaun of Barre Town
Bouchard of Colchester	Haas of Rochester	McNeil of Rutland Town
Branagan of Georgia	Head of South Burlington	Miller of Shaftsbury
Brennan of Colchester	Heath of Westford	Mook of Bennington
Burditt of West Rutland	Hebert of Vernon	Moran of Wardsboro
Buxton of Tunbridge	Helm of Fair Haven	Mrowicki of Putney
Campion of Bennington	Higley of Lowell	Myers of Essex
Canfield of Fair Haven	Hooper of Montpelier	Nuovo of Middlebury
Cheney of Norwich	Howard of Cambridge	O'Brien of Richmond
Christie of Hartford	Howrigan of Fairfield	Olsen of Jamaica
Clark of Vergennes	Hubert of Milton	O'Sullivan of Burlington
Clarkson of Woodstock	Jerman of Essex	Partridge of Windham
Condon of Colchester	Jewett of Ripton	Pearce of Richford
Conquest of Newbury	Johnson of South Hero	Pearson of Burlington
Consejo of Sheldon	Johnson of Canaan	Peaslee of Guildhall
Copeland-Hanzas of Bradford	Keenan of St. Albans City	Peltz of Woodbury
Corcoran of Bennington	Kitzmiller of Montpelier	Perley of Enosburgh
Courcelle of Rutland City	Klein of East Montpelier	Potter of Clarendon
Crawford of Burke	Koch of Barre Town	Pugh of South Burlington
Dakin of Chester	Komline of Dorset	Ralston of Middlebury
Davis of Washington	Krebs of South Hero	Ram of Burlington
Deen of Westminster	Krowinski of Burlington	Reis of St. Johnsbury
Degree of St. Albans City	Kupersmith of South Burlington	Russell of Rutland City
Devereux of Mount Holly	Larocque of Barnet	Savage of Swanton
Dickinson of St. Albans Town	Lawrence of Lyndon	Scheuermann of Stowe
Donaghy of Poultney	Lenes of Shelburne	Shand of Weathersfield
Donahue of Northfield	Lewis of Berlin	Sharpe of Bristol
Donovan of Burlington	Lewis of Derby	Shaw of Pittsford
Eckhardt of Chittenden	Lippert of Hinesburg	Smith of New Haven
Edwards of Brattleboro	Lorber of Burlington	South of St. Johnsbury
	Macaig of Williston	Spengler of Colchester
		Stevens of Waterbury

Stevens of Shoreham	Trieber of Rockingham	Woodward of Johnson
Strong of Albany	Turner of Milton	Wright of Burlington
Stuart of Brattleboro	Waite-Simpson of Essex	Yantachka of Charlotte
Sweaney of Windsor	Webb of Shelburne	Young of Glover
Taylor of Barre City	Wilson of Manchester	Zagar of Barnard
Toll of Danville	Winters of Williamstown	
Townsend of Randolph	Wizowaty of Burlington	

Those who voted in the negative are:

none

Those members absent with leave of the House and not voting are:

Browning of Arlington	Lanpher of Vergennes	Smith of Morristown
Burke of Brattleboro	Morrissey of Bennington	Till of Jericho
Grad of Moretown	Munger of South Burlington	
Kilmartin of Newport City	Poirier of Barre City	

Thereupon, third reading was ordered.

Bill Amended, Read Third Time and Passed

H. 524

House bill, entitled

An act relating to the regulation of professions and occupations

Was taken up and pending third reading of the bill, **Rep. Donahue of Northfield** moved to amend the bill as follows:

By adding a new section to be Sec. 62a to read:

Sec. 62a. 31 V.S.A. § 1108 is amended to read:

§ 1108. MATCHES; SPECIAL PROVISIONS

* * *

(e) A person shall not participate in a match unless he or she is 18 years of age or older.

Thereupon, **Rep. Donahue of Northfield** asked and was granted leave of the House to withdraw her amendment.

Pending third reading of the bill, **Rep. Hubert of Milton** moved to amend the bill as follows:

First: In Sec. 61, 31 V.S.A. § 1101, by striking subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) "Boxing match" or "match" means a contest or training exhibition for a prize or purse where an admission fee is charged and where individuals score points by striking the head and upper torso of an opponent with padded fists. An amateur ~~boxing~~ match is a match held under the supervision of a school, college, or university ~~or~~; under the supervision of United States Amateur Boxing, Inc. or its successor as the ~~nationally designated~~ nationally designated governing body for amateur boxing; or, for any other match, under the supervision of a nationally designated governing body. All other matches shall be considered professional ~~boxing~~ matches. Kickboxing, martial arts, and mixed martial arts, as defined in this section, shall be considered "matches" for the purposes of this chapter.

Second: By adding a new section to be Sec. 62a to read:

Sec. 62a. 31 V.S.A. § 1108 is amended to read:

§ 1108. MATCHES; SPECIAL PROVISIONS

* * *

(e) A person under the age of 18 shall not participate in any professional match, as that term is described in subdivision 1101(2) of this chapter.

Which was agreed to.

Pending third reading of the bill, **Rep. Fagan of Rutland City** moved to amend the bill as follows:

By adding a new section to be Sec. 17a to read:

Sec. 17a. NURSING SUPERVISION LIMITATION; MEDICATION
NURSING ASSISTANTS

No provision in chapter 28 of Title 26 shall prohibit the refusal by a nurse practicing nursing in a nursing home on the effective date of this act to supervise a medication nursing assistant as that term is defined in subchapter 2 of chapter 28 of Title 26.

Which was agreed to.

Pending third reading of the bill, **Rep. Evans of Essex** moved to amend the bill as follows:

In Sec. 51, 26 V.S.A. § 3381, in subdivision (1), after "American Dietetic Association", by striking out "Academy of Dietetics and Nutrition" and inserting in lieu thereof "Academy of Nutrition and Dietetics"

Which was agreed to.

Thereupon, the bill was read the third time and passed.

Adjournment

At two o'clock and fifteen minutes in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.