

Journal of the Senate

THURSDAY, MARCH 20, 2014

Pursuant to the Senate Rules, in the absence of the President, the Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bills Referred to Committee on Appropriations

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

S. 208. An act relating to solid waste management.

S. 220. An act relating to amending the workers' compensation law, establishing a registry of sole contractors, increasing the funds available to the Department of Tourism and Marketing for advertising, and regulating legacy insurance transfers.

Joint Assembly

At ten o'clock and thirty minutes in the morning, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 46. Joint resolution providing for a Joint Assembly to vote on the retention of six Superior Judges.

The Senate repaired to the hall of the House.

Having returned therefrom, at eleven o'clock and forty-five minutes in the morning, the President *pro tempore* assumed the Chair.

Adjournment

On motion of Senator Baruth, the Senate adjourned until one o'clock in the afternoon.

Afternoon

The Senate was called to order by the President *pro tempore*.

Bill Amended; Bill Passed**S. 234.**

Senate bill entitled:

An act relating to Medicaid coverage for home telemonitoring services.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sirotkin moved to amend the bill by as follows:

First: In Sec. 1, subsection (a) after the words home health agencies by inserting the words or other qualified providers as defined by the Agency of Human Services

Second: In Sec. 1, subsection (b) after the words home health agency where it *twicely* appears by inserting the words or other qualified providers as defined by the Agency of Human Services

Third: In Sec. 1, subsection (c), subdivision (2) after the words home health agency by inserting the words or other qualified providers as defined by the Agency of Human Services

Which was agreed to.

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

Bill Amended; Third Reading Ordered**S. 175.**

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

An act relating to permitting a student to remain enrolled in a Vermont public school after moving to a new school district.

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

Sec. 1. 16 V.S.A. § 1093 is amended to read:

§ 1093. NONRESIDENT STUDENTS

(a) A school board may receive into the schools under its charge nonresident students under such terms and restrictions as it deems best and money received for the instruction of the students shall be paid into the school fund of the district.

(b) Notwithstanding subsection (a) of this section, if a student has legal residence in a Vermont school district and is enrolled in and attending a school

maintained and operated by that district, and if at any time after completion of the annual census period defined in subdivision 4001(1)(A) of this title the student moves to a different Vermont school district with the intention of remaining there indefinitely as contemplated in subsection 1075(a) of this title, then the student, or the student's parent or legal guardian if the student is a minor, may choose to remain enrolled in the school maintained by the original district for the remainder of the school year by notifying both school districts of the decision to do so.

(c) Nothing in this section shall be construed to eliminate State or federal requirements for a district to enroll eligible students residing outside the district under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301 et seq., as may be amended.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Collins moved to amend the bill as follows:

In Sec.1, 16 V.S.A. § 1093, in subsection (b), after the word “then” by striking out the following: “the student, or the student's parent or legal guardian if the student is a minor,” and inserting in lieu thereof the following: , after a meeting at which the student, the student's parent or legal guardian if the student is a minor, and representatives of both school districts discuss the educational advantages and disadvantages of the student remaining in the original district, the student or the student's parent or guardian

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Joint Resolution Amended; Third Reading Ordered

J.R.S. 27.

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

Joint resolution relating to an application of the General Assembly for Congress to call a convention for proposing amendments to the U.S. Constitution.

Reported recommending that the joint Senate resolution be amended by striking out the second *Resolved* clause in its entirety and inserting in lieu thereof a new second *Resolved* clause to read as follows:

Resolved: That delegates to such a convention from Vermont shall propose no amendments which do not have a primary goal of addressing the grievances listed herein, *and be it further*

And that when so amended the joint resolution ought to be adopted.

Thereupon, the joint Senate resolution was read the second time by title only pursuant to Rule 43, and pending the question, Shall the joint Senate resolution be amended as recommended by the Committee on Judiciary?, Senator Galbraith moved to amend the recommendation of amendment of the Committee on Judiciary as follows:

By striking out the first and second *Resolved* clauses in their entirety and inserting in lieu thereof the following:

Resolved by the Senate and House of Representatives:

That the General Assembly, pursuant to Article V of the U.S. Constitution, hereby petitions the U.S. Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States of America that would limit the corrupting influence of money in our electoral process, including, inter alia, by overturning the *Citizens United* decision, *and be it further*

Resolved: That this petition shall not be considered by the U.S. Congress until 33 other states submit petitions for the same purpose as proposed by Vermont in this resolution and unless the Congress determines that the scope of amendments to the Constitution of the United States considered by the convention shall be limited to the same purpose requested by Vermont, *and be it further*

Which was agreed to.

Thereupon, the recommendation of amendment of the Committee on Judiciary, as amended, was agreed to and third reading of the joint Senate resolution was ordered on a roll call, Yeas 25, Nays 2.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Bray, Collins, Cummings, Doyle, Flory, French, *Galbraith, Hartwell, Kitchel, Lyons, MacDonald, Mazza, Nitka, Pollina, Rodgers, Sears, Sirotkin, Snelling, Starr, Westman, White, Zuckerman.

Those Senators who voted in the negative were: *Benning, McCormack.

Those Senators absent or not voting were: Campbell (presiding), McAllister, Mullin.

*Senator Benning explained his vote as follows:

“Mr. President:

“I cannot support this resolution. On its face it seeks to soothe public reaction to the admittedly obscene amounts of money being spent in politics. But central to its mission is an unmistakable attack on freedom of speech.

“Its chief target is the case of *Citizen's United*, a case which upheld the right of individuals, and groups of individuals who have pooled their resources, to fund their speech in accordance with the first amendment. As a legislator sworn to uphold all constitutional provisions, I refuse to bow to the prevailing public winds of passion.

“I believe Vermonters are intelligent enough to recognize speech they disagree with, no matter how many times they hear it, and have had the wisdom through the years to vote accordingly.

“I also fear, Mr. President, that a convention called pursuant to this resolution may bring us far worse than whatever ill is alleged by the holding in *Citizen's United*.

“For those reasons Mr. President, I cannot support this resolution.”

*Senator Galbraith explained his vote as follows:

“Mr. President:

“I do not support calling for a convention to propose amendments to the US Constitution. There is too much uncertainty about the process. For example, we have no idea how the delegates would be chosen, about the number of delegates allocated to each state and whether delegation size will vary by population, whether the convention will make decisions by majority of state delegations or by the majority of delegates, whether state delegations will include those from only the dominant political party in a state or represent the diversity of views within a state, and, most importantly, whether the convention can be limited to the specific issue for which the convention was called. The usual method of amending the US Constitution requires a super majority (two thirds of the House of Representatives and the Senate) as well as simple majorities in each of 38 state legislatures. The Convention route does not require a super majority at any stage in the process, needing only simple majorities in two thirds of the state legislatures to call for a convention and simple majorities in three fourths of the state legislatures to ratify an amendment. I think that our liberties are best protected by requiring super majorities to change the Constitution.

“Given the current political make up of legislatures around the country, I see no chance that 33 states will join Vermont in calling for a Convention for the purpose of overturning Citizen's United. And, unless they do so, this resolution is not a valid call for a convention. In addition, Congress may not be able to limit the scope of an Article V convention, and if it cannot, then this is not valid petition to call for an Article V convention.

“Since there is no prospect of a Convention on the grounds requested by Vermont, I consider my vote on the resolution to be no more than an expression of my disapproval of the Citizens United decision.”

Adjournment

On motion of Senator Baruth, the Senate adjourned until five o'clock in the evening.

Evening

The Senate was called to order by the President *pro tempore*.

Message from the House No. 34

A message was received from the House of Representatives by Ms. Melissa Kucserik, 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. 225. An act relating to a statewide policy on the use of and training requirements for electronic control devices.

H. 575. An act relating to lottery ticket sales.

H. 645. An act relating to workers' compensation.

H. 656. An act relating to professions and occupations regulated by the Office of Professional Regulation.

H. 765. An act relating to eliminating the part-time certification of law enforcement officers.

H. 872. An act relating to the State's Transportation Program and miscellaneous changes to the State's transportation laws.

H. 873. An act relating to making technical amendments to tax increment financing laws.

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

Bills Referred

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

H. 225.

An act relating to a statewide policy on the use of and training requirements for electronic control devices.

To the Committee on Government Operations.

H. 575.

An act relating to lottery ticket sales.

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

H. 645.

An act relating to workers' compensation.

To the Committee on Finance.

H. 656.

An act relating to professions and occupations regulated by the Office of Professional Regulation.

To the Committee on Government Operations.

H. 765.

An act relating to eliminating the part-time certification of law enforcement officers.

To the Committee on Government Operations.

H. 872.

An act relating to the State's Transportation Program and miscellaneous changes to the State's transportation laws.

To the Committee on Transportation.

H. 873.

An act relating to making technical amendments to tax increment financing laws.

To the Committee on Finance.

Bill Passed**S. 100.**

Senate bill of the following title was read the third time and passed:

An act relating to forest integrity.

Third Reading Ordered**H. 718.**

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

An act relating to approval of amendments to the charter of the Village of Derby Line.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered on a division of the Senate Yeas 17, Nays 9.

Bill Amended; Third Reading Ordered**S. 293.**

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

An act relating to reporting on population-level outcomes and indicators and on program-level performance measures.

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

Sec. 1. PURPOSE

(a) This act is necessary for the General Assembly to obtain data-based information to know how well State government is working to achieve the population-level outcomes the General Assembly sets for Vermont's quality of life, and will assist the General Assembly in determining how best to invest taxpayer dollars.

(b) Evaluating the results of spending taxpayer dollars will allow the General Assembly to be more forward-thinking, strategic, and responsive to the long-term needs of Vermonters and allow the Executive Branch to consider how the programs it administers could be further refined in order to produce better results.

(c) Using the data-based information provided under this act will encourage State government to continue to move steadily toward results-based accountability and will help educate the General Assembly and Executive Branch on how to be more effective and accountable to Vermonters and will encourage a better partnership with Vermont communities.

Sec. 2. 3 V.S.A. chapter 45 (administration), subchapter 5 is added to read:

Subchapter 5. Chief Performance Officer

§ 2311. CHIEF PERFORMANCE OFFICER; ANNUAL REPORT ON POPULATION-LEVEL OUTCOMES USING INDICATORS

(a) Report. Annually, on or before July 30, the Chief Performance Officer within the Agency of Administration shall report to the General Assembly on the State's progress in reaching the population-level outcomes for each area of Vermont's quality of life set forth in subsection (b) of this section by providing data for the population-level indicators that are requested pursuant to the process set forth in subsection (c) of this section.

(b) Vermont population-level quality of life outcomes.

(1) Vermont has a prosperous economy.

(2) Vermonters are healthy.

(3) Vermont's environment is clean and sustainable.

(4) Vermont's communities are safe and supportive.

(5) Vermont's families are safe, nurturing, stable, and supported.

(6) Vermont's children and young people achieve their potential, including:

(A) Pregnant women and young people thrive.

(B) Children are ready for school.

(C) Children succeed in school.

(D) Youths choose healthy behaviors.

(E) Youths successfully transition to adulthood.

(7) Vermont's elders and people with disabilities and people with mental conditions live with dignity and independence in settings they prefer.

(8) Vermont has open, effective, and inclusive government at the State and local levels.

(c) Requesting population-level indicators.

(1) Annually, on or before March 1, a standing committee of the General Assembly having jurisdiction over a population-level quality of life outcome set forth in subsection (b) of this section may submit to the Government Accountability Committee a request that any population-level indicator related to that outcome be revised.

(2) If that request is approved by the Government Accountability Committee, the President Pro Tempore of the Senate, and the Speaker of the House, the Chief Performance Officer shall revise and report on the population-level indicator in accordance with the request and this section.

(d) The report set forth in this section shall not be subject to the limitation on the duration of agency reports set forth in 2 V.S.A. § 20(d).

§ 2312. PERFORMANCE ACCOUNTABILITY LIAISONS TO THE GENERAL ASSEMBLY

(a) The Chief Performance Officer shall designate an employee in each agency of State government to be a performance accountability liaison to the General Assembly. A liaison designated under this section shall be responsible for reviewing with the General Assembly any of the population-level outcomes and indicators set forth in section 2311 of this subchapter to which that agency contributes and for responding to any other requests for results-based accountability information requested by the General Assembly.

(b) The performance accountability liaisons shall report to the Chief Performance Officer on any action taken under subsection (a) of this section.

(c) Annually, on or before July 30 and as part of any other report requirement to the General Assembly set forth in this subchapter, the Chief Performance Officer shall report to the General Assembly on his or her analysis of the actions taken by the performance accountability liaisons under this section.

§ 2313. PERFORMANCE CONTRACTS AND GRANTS

(a) The Chief Performance Officer shall have oversight over the State's performance contracts and grant-making in order to:

(1) assist contractors and grantees in developing performance measures for those contracts and grants; and

(2) ensure contractors and grantees subject to those contracts and grants meet the performance requirement specified therein.

(b) Annually, on or before July 30 and as part of any other report requirement to the General Assembly set forth in this subchapter, the Chief Performance Officer shall report to the General Assembly on the progress by

rate or percent of how many State contracts and grants have performance accountability requirements.

Sec. 3. INITIAL POPULATION-LEVEL INDICATORS

Until any population-level indicators are requested pursuant to the provisions of Sec. 2 of this act, 3 V.S.A. § 2311(c) (requesting population-level indicators), each population-level quality of life outcome set forth in Sec. 2 of this act, 3 V.S.A. § 2311(b) (Vermont population-level quality of life outcomes), and listed in this section shall have the following population-level indicators:

(1) Vermont has a prosperous economy.

(A) Percent or rate per 1,000 jobs of nonpublic sector employment.

(B) Median household income.

(C) Percent of Vermont covered by state-of-the-art telecommunications infrastructure.

(D) Median house price.

(E) Rate per 1,000 residents of resident unemployment.

(F) Percent of structurally-deficient bridges, as defined by the Vermont Agency of Transportation.

(G) Percent of local farm sales.

(2) Vermonters are healthy.

(A) Percent of adults who exceed healthy weight.

(B) Percent of adults who smoke cigarettes.

(C) Rate per 1,000 adults of adults who are homeless.

(D) Percent of individuals and families living at different poverty levels.

(E) Percent of adults at or below 200 percent of federal poverty level.

(F) Percent of adults who are insured.

(3) Vermont's environment is clean and sustainable.

(A) Percent of waters that need remediation under the Clean Water Act.

(B) Percent of water, sewer, and stormwater systems that meet federal and State standards.

(C) Carbon dioxide per capita.

(D) Electricity by fuel or power type.

(4) Vermont's communities are safe and supportive.

(A) Rate per 1,000 adults 25 years of age or older of out-of-home placements for such adults.

(B) Rate per 1,000 residents of petitions filed for relief from domestic abuse.

(C) Rate per 1,000 crimes of violent crime.

(D) Rate per 1,000 residents of sexual assault committed against residents.

(E) Percent of residents living in affordable housing.

(F) Percent or rate per 1,000 formerly incarcerated residents of residents returned to prison for technical violations of probation or parole.

(G) Percent or rate per 1,000 nonviolent offenders of nonviolent offenders diverted from prison into the community.

(H) Percent or rate per 1,000 people convicted of crimes of recidivism.

(I) Rate per 1,000 crimes of violent crime.

(J) Rate per 1,000 residents of residents incarcerated.

(K) Percent or rate per 1,000 residents of residents entering the corrections system.

(5) Vermont's families are safe, nurturing, stable, and supported.

(A) Number and rate per 1,000 children of confirmed reports of child abuse and neglect.

(B) Percent or rate per 1,000 children of children who are homeless.

(C) Percent or rate per 1,000 families of families who are homeless.

(D) Number and rate per 1,000 children and youth of children and youth in out-of-home care.

(6) Vermont's children and young people achieve their potential, including:

(A) Pregnant women and young people thrive.

(i) Percent of pregnant women receiving prenatal care in the first trimester.

(ii) Percent of low birth weight babies or preterm births.

(iii) Rate per 1,000 infants of infant mortality.

(iv) Percent of children at or below 200 percent of federal poverty level.

(v) Percent of children who are insured.

(B) Children are ready for school.

(i) Percent of kindergarteners fully immunized.

(ii) Percent of first-graders screened for vision and hearing problems.

(iii) Percent of children ready for kindergarten in all domains.

(iv) Percent of children enrolled in high quality early childhood programs that receive at least four out of five stars under State standards.

(C) Children succeed in school.

(i) Rate per 1,000 children of children's school attendance.

(ii) Percent of children below the basic level of fourth grade reading achievement under State standards.

(iii) Rate per 1,000 high school students of high school graduation.

(D) Youths choose healthy behaviors.

(i) Rate per 1,000 female teenagers under 18 years of age of pregnancy in such teenagers.

(ii) Percent of students who report using alcohol, tobacco, or drugs within the last 30 days.

(iii) Number and rate per 1,000 minors of minors who are under the supervision of the Department of Corrections.

(E) Youths successfully transition to adulthood.

(i) Percent of high school seniors with plans for education, vocational training, or employment.

(ii) Percent of graduating high school seniors who continue their education within six months of graduation.

(iii) Percent of new families at risk (meaning there is a first birth to an unmarried woman under 20 years of age who has less than a high school diploma).

(iv) Rate per 1,000 teens of teen nonviolent deaths.

(v) Percent of high school graduates entering postsecondary education, work, or training.

(vi) Percent of completion of postsecondary education.

(vii) Rate per 1,000 high school graduates of high school graduates entering a training program.

(7) Vermont's elders and people with disabilities and people with mental conditions live with dignity and independence in settings they prefer.

(A) Rate per 1,000 vulnerable adults of confirmed reports of abuse and neglect of vulnerable adults.

(B) Percent of elders living in institutions versus home care.

(8) Vermont has open, effective, and inclusive government at the State and local levels.

(A) Percent of youth who report parent involvement in schooling.

(B) Percent of youth who report they help decide what goes on in their school.

(C) Percent of eligible population voting in general elections.

(D) Percent of students volunteering in their community.

(E) Percent of youth who feel valued by their community.

(F) Percent of youth who have an adult who provides help and advice.

Sec. 4. CHIEF PERFORMANCE OFFICER; REPORT ON PERFORMANCE MEASURE PILOT PROGRAM

(a) Annually, on or before July 30 and as part of any other report requirement to the General Assembly set forth in Sec. 2 of this act, 3 V.S.A. chapter 45, subchapter 5 (Chief Performance Officer), the Chief Performance Officer shall submit to the General Assembly a report on the Department of Finance and Management's Performance Measure Pilot Program. The report shall include:

(1) the performance measure data collected by the pilot participants; and

(2) the progress of all programs in the Executive Branch and how many of those programs have and are using performance measures.

(b) The Chief Performance Officer shall collaborate with the Joint Fiscal Office in developing new performance measures for programs.

Sec. 5. APPROPRIATION; GOVERNMENT ACCOUNTABILITY COMMITTEE; RESULTS-BASED ACCOUNTABILITY TRAINING

(a) There is appropriated from the General Fund to the General Assembly in Fiscal Year 2015 the amount of \$20,000.00 for training on results-based accountability, as determined by the Government Accountability Committee (the GAC).

(b) The GAC may use any portion of this appropriation for training legislators, Executive Branch program managers, community partners, and any other persons it determines necessary on results-based accountability in order to share knowledge, understand current trends in program results, and expand the use of results-based accountability in State government and among community partners.

Sec. 6. CHIEF PERFORMANCE OFFICER; INITIAL PERFORMANCE ACCOUNTABILITY LIAISON APPOINTMENTS

The Chief Performance Officer within the Agency of Administration shall make his or her initial designations of the performance accountability liaisons described in Sec. 2 of this act, 3 V.S.A. § 2312, by November 15, 2014.

Sec. 7. QUARTERLY PROGRESS REPORTS; TEMPORARY SUSPENSION

The report requirement set forth in 2010 Acts and Resolves No. 146, Sec. H4 (Challenges for Change; quarterly reporting and implementation) is temporarily suspended. The report requirement shall resume in 2017 beginning with the first quarterly report due for that year.

Sec. 8. REPEAL; ANNUAL REPORT ON POPULATION-LEVEL OUTCOMES AND INDICATORS

Sec. 2 of this act, 3 V.S.A. § 2311 (Chief Performance Officer; annual report on population-level outcomes using indicators), is repealed on January 1, 2017.

Sec. 9. 3 V.S.A. § 2312 is amended to read:

§ 2312. PERFORMANCE ACCOUNTABILITY LIAISONS TO THE GENERAL ASSEMBLY

(a) The Chief Performance Officer shall designate an employee in each agency of State government to be a performance accountability liaison to the General Assembly. A liaison designated under this section shall be responsible for reviewing with the General Assembly any ~~of the population-level outcomes and indicators set forth in section 2311 of this subchapter to which that agency contributes and for responding to any other~~ requests for results-based accountability information requested by the General Assembly.

(b) The performance accountability liaisons shall report to the Chief Performance Officer on any action taken under subsection (a) of this section.

(c) Annually, on or before July 30 and as part of any other report requirement to the General Assembly set forth in this subchapter, the Chief Performance Officer shall report to the General Assembly on his or her analysis of the actions taken by the performance accountability liaisons under this section.

Sec. 10. EFFECTIVE DATES

(a) This section and Secs. 1 (purpose)–7 (quarterly progress reports; temporary suspension) shall take effect on passage.

(b) Secs. 8 (repeal; annual report on population-level outcomes using indicators) and 9 (amending 3 V.S.A. § 2312 (performance accountability liaisons to the General Assembly)) shall take effect on January 1, 2017.

And that when so amended the bill ought to pass.

Senator Snelling, for the Committee on Appropriations, to which the bill was referred, reported recommending that it has considered the same and recommends that the bill be amended as recommended by the Committee on Government Operations, with the following amendment thereto:

By striking out Sec. 5 in its entirety and inserting in lieu thereof: [Deleted.]

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Rules Suspended; Bill Committed

Appearing on the Calendar for notice, on motion of Senator Baruth the rules were suspended and Senate bill entitled:

S. 23. An act relating to access to records in adult protective services investigations.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Health and Welfare, Senator Baruth moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Rules with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

Adjournment

On motion of Senator Baruth, the Senate adjourned until eleven o'clock and thirty minutes in the morning.