

JOURNAL OF THE HOUSE.

Tuesday, July 13, 2010.

Met according to adjournment, at eleven o'clock A.M., with Mr. Donato of Medford in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Pledge of allegiance.

At the request of the Chair (Mr. Donato), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Silent Prayers.

Marine Corporal Paul Fagundes.

At the request of Representatives Sullivan of Fall River, Aguiar of Fall River and Rodrigues of Westport, the members, guests and employees stood in a moment of silent tribute in respect to the memory of Marine Corporal Paul Fagundes, formerly of Fall River, who drowned while trying to rescue two fellow Marines off a Naval Station in Guantanamo Bay, Cuba, on July 4, 2010. The Marines were caught in a rip tide and all three perished.

Corporal Fagundes is survived by his wife, Cynthia Fagundes, who is expecting their daughter. He also leaves a son, Cazzian, his mother Rosemary, and a sister, Belinda Fagundes of Fall River.

Joseph McNamara.

At the request of Representative Nangle of Lowell, Golden of Lowell and Murphy of Lowell, the members, guests and employees stood in a moment of silent prayer in honor of the memory of Joseph McNamara of Lowell. Joe was a legislative aide for 17 years to former Representative Edward A. LeLacheur of Lowell. Joe leaves his wife, Peggy, 7 children and 8 grandchildren.

Statement Concerning Representative Basile of Boston.

Statement concerning Mr. Basile of Boston.

A statement of Mr. Mariano of Quincy concerning Mr. Basile of Boston was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Basile of Boston is unable to be present in the House Chamber for today's sitting due to illness. His missing of roll calls today is due entirely to the reason stated.

Statement Concerning Representative Costello of Newburyport.

Statement concerning Mr. Costello of Newburyport.

A statement of Mr. Vallee of Franklin concerning Mr. Costello of Newburyport was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Costello of Newburyport, is unable to be present in the House Chamber for today's sitting due to a death in his family. His missing of roll calls today is due entirely to the reason stated.

Statement Concerning Representative Ferrante of Gloucester.

A statement of Mr. Vallee of Franklin concerning Ms. Ferrante of Gloucester was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House that one of our colleagues, Representative Ferrante of Gloucester, is unable to attend session on July 13th and 14th, 2010, as she has been selected to participate in the Emerging Political Leaders Program at the Darden School of Business, University of Virginia, that is being held from July 12th to July 15th. Her missing of roll calls today and tomorrow will be due entirely to the reason stated.

Statement concerning Ms. Ferrante of Gloucester.

Statement of Representative Rice of Gardner.

A statement of Mr. Rice of Gardner was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that I was unable to be present in the House Chamber for a portion of today's sitting due to my attendance of the retirement ceremonies for Judge Luis G. Perez. My missing of roll calls today is due entirely to the reason stated.

Statement concerning Mr. Rice of Gardner.

Resolutions.

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Resolutions (filed by Mr. Walsh of Boston) congratulating the University of Massachusetts Boston baseball team; and

UMass-Boston,—baseball.

Resolutions (filed by Mr. Walsh of Boston) congratulating the University of Massachusetts Boston women's volleyball team.

UMass-Boston,—volleyball.

Mr. Binienda of Worcester, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of Mr. McMurtry of Dedham, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Papers from the Senate.

A petition (accompanied by bill, Senate, No. 2539) of Thomas P. Kennedy (by vote of the town) for legislation to amend the subsidized housing inventory for the town of Hanover, was referred, in concurrence, to the committee on Municipalities and Regional Government.

Hanover,—subsidized housing.

A Bill establishing a sick leave bank for James E. Munchbach, an employee of the Trial Court (Senate, No. 2413) (on a petition), passed to be engrossed by the Senate, was read; and it was referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

James E. Munchbach,—sick leave bank.

Mr. Kafka of Stoughton, for said committee, then reported recommending that the matter be scheduled for consideration by the House.

Under suspension of the rules, on motion of Mr. Fagan of Taunton, the bill was read a second time forthwith; and it was ordered to a third reading.

Emergency Measures.

Mercury devices.

The engrossed Bill relative to the sale of antique barometers, thermometers and clocks (see Senate, No. 2403), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 29 to 0. Sent to the Senate for concurrence.

Athletic,— safety.

The engrossed Bill relative to safety regulations for school athletic programs (see Senate, No. 2469, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 12 to 0. Sent to the Senate for concurrence.

Subsequently, the Senate having concurred in adoption of the emergency preamble, the bill (which originated in the Senate) was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Engrossed Bills.

Bill re-enacted.

The engrossed Bill relative to property tax exemptions for rental properties in the town of Wellfleet restricted as affordable housing (see House, No. 2852, amended) (which originated in the House) (which had been returned by His Excellency the Governor with recommendation of amendment, having been certified by the Clerk to be rightly and truly prepared for final passage, was passed to be re-enacted, in its amended form; and it was signed by the acting Speaker and sent to the Senate.

Bill enacted.

The engrossed Bill further regulating public charities (see Senate, No. 2117, amended) (which originated in the Senate), in respect to which the Senate had concurred in adoption of the emergency preamble, was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Recess.

Recess.

At nine minutes after eleven o'clock A.M., on motion of Mr. deMacedo of Plymouth (Mr. Donato of Medford being in the Chair), the House recessed until the hour of one o'clock P.M.; and at twenty-two minutes after one o'clock P.M., the House was called to order with Mr. Petrolati of Ludlow in the Chair.

Order.

Land based wind projects,— procedures.

Mr. Binienda of Worcester, for the committee on Rules, reported (under the provisions of House Rules 7B and 7C) an Order relative to special procedures for consideration of the House Bill relative to comprehensive siting reform for land based wind projects (Senate,

No. 2260, amended) (for order, see House, No. 4876). The order then was adopted.

Papers from the Senate.

A report of the committee of conference on the disagreeing votes of the two branches, with reference to the House amendments (striking out all after the enacting clause and inserting in place thereof a perfected duplicate of the text contained in House document numbered 2281) of the Senate Bill relative to kayaks (Senate, No. 974), recommending passage of a Bill relative to kayaks (Senate, No. 2518), came from the Senate with the endorsement that it had been accepted by said branch. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kafka of Stoughton, for the committee on Steering, Policy and Scheduling, then reported that the matter be scheduled for consideration by the House; and, under said rule, it was placed in the Orders of the Day for the next sitting, the question being on acceptance, in concurrence.

The House Bill relative to Savings Bank Life Insurance (House, No. 889) came from the Senate passed to be engrossed, in concurrence, with an amendment striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2535.

Under suspension of Rule 35, on motion of Ms. Reinstein of Revere, the amendment (reported by the committee on Bills in the Third Reading to be correctly drawn) was considered forthwith; and after debate it was adopted, in concurrence.

Reports of Committees.

By Mr. Donato of Medford, for the committee on Municipalities and Regional Government, on a petition, a Bill authorizing the city of Boston to grant permanent volumetric easements related to vertical transportation improvements over certain parcels of land in the city of Boston (House, No. 4806) [Local Approval Received]. Read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

By Mr. Moran of Boston, for the committee on Election Laws, on a petition, a Bill authorizing the State Secretary to place the office of selectmen on the state election ballot in the town of Mendon (House, No. 4849) [Local Approval Received].

By Mr. Donato of Medford, for the committee on Municipalities and Regional Government, on a petition, a Bill providing an easement for affordable senior apartments on Ayer Road (House, No. 4850) [Local Approval Received].

By Mr. Spellane of Worcester, for the committee on Public Service, on a petition, a Bill establishing a sick leave bank for John K. Ryan, an employee of the Office of the Inspector General (House, No. 4866).

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Kayaks.

Savings Bank Life Insurance.

Boston,— easements.

Mendon,— selectmen.

Harvard— easement.

John K. Ryan,— sick leave.

Mr. Kafka of Stoughton, for said committee reported, in each instance, that the matter be scheduled for consideration by the House. Under suspension of the rules, in each instance, on motion of Mr. Kafka of Stoughton, the bills were read a second time forthwith; and they were ordered to a third reading.

Chicopee,—
mayor.

By Mr. Kafka of Stoughton, for the committee on Steering, Policy and Scheduling, that the Bill relative to the city of Chicopee and the Term of Mayor (House, No. 4713), be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of the same member, the bill was read a second time forthwith; and it was ordered to a third reading.

Municipal
relief.

Mr. Donato of Medford, for the committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2436) of the House Bill relative to municipal relief (House, No. 4631), reported recommending passage of a bill with the same title (House, No. 4877). Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kafka of Stoughton, for the committee on Steering, Policy and Scheduling then reported that the matter be scheduled for consideration by the House; and, under said rule, it was placed in the Orders of the Day for the next sitting, the question being on acceptance.

Real estate
management.

Report of the committee on Consumer Protection and Professional Licensure, ought NOT to pass (under Joint Rule 10), on the petition (accompanied by bill, House, No. 4751) of Danielle W. Gregoire for legislation to further regulate the certification of real estate management companies. Under suspension of the rules, on motion of Miss Gregoire of Marlborough, the report was considered forthwith. Pending the question on acceptance of the report, the petition was recom- mitted, on further motion of the same member.

Election Laws,—
study.

By Mr. Moran of Boston, for the committee on Election Laws, on House, Nos. 552, 553, 554, 555, 556, 558, 559, 560, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 574, 575, 576, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 589, 590, 591, 592, 594, 600, 604, 631, 645, 646, 647, 648, 651, 652, 653, 654, 655, 657, 658, 659, 662, 664, 666, 668, 669, 670, 671, 672, 673, 675, 677, 679, 680, 681, 682, 684, 685, 686, 687, 688, 689, 690, 691, 3664, 3880, 4090, 4306, 4308 and 4448, an Order relative to authorizing the committee on Election Laws to make an investigation and study of certain House documents concerning election issues (House, No. 4870). Referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

Subsequently Mr. Binienda of Worcester, for said committees, reported asking to be discharged from further consideration of said order; and recommending that the same be referred to the House committee on Rules.

Under Rule 42, the report was considered forthwith; and it was accepted.

By Mr. Kafka of Stoughton, for the committee on Steering, Policy and Scheduling, that the following matters be scheduled for considera- tion by the House:

The Senate Bill authorizing the town of Hubbardston to send certain information to the voters relative to ballot questions (Senate, No. 2090, amended); and

Hubbardston,—
voter
information.

House bills

To protect farm viability (House, No. 3477);
Establishing a post employment benefits trust fund in the town of Wayland (House, No. 4319) [Local Approval Received]; and

Farms,
Wayland,—
trust fund.
Stanley
Daoust,—
benefits.

Authorizing the town of Lee to grant retirement benefits to Stanley Daoust (House, No. 4709) [Local Approval Received];

Severally placed in the Orders of the day for the next sitting for a second reading.

*Motion to Discharge a Certain Matter
from the Orders of the Day.*

The Senate Bill relative to comprehensive siting reform for land based wind projects (Senate, No. 2260, amended), reported by the committee on Bills in the Third Reading to be correctly drawn, was discharged from its position in the Orders of the Day, and read a third time forthwith, under suspension of Rule 47, on motion of Mr. Straus of Mattapoisset.

Wind projects,—
land based.

After remarks on the question on passing the bill, as amended, to be engrossed, in concurrence, Ms. Sandlin of Agawam asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the pres- ence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 140 members were recorded as being in attendance.

Quorum,—
yea and nay
No. 431.

[See Yea and Nay No. 431 in Supplement.]

Therefore a quorum was present.

Subsequently a statement of Mr. Brady of Brockton was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that I was unable to be present in the House Chamber for a portion of today's sitting due to official business in another part of the State House. My missing a quorum roll call today is due entirely to the reason stated.

Statement of
Mr. Brady
of Brockton.

After further remarks on the question passing the bill, as amended, to be engrossed, in concurrence, Mr. Guyer of Dalton then moved to amend the bill by adding the following section:

“SECTION 15. Chapter 535 of the Acts of 2008 is hereby repealed.”.

After debate the amendment was rejected.

The same member then moved to amend the bill in section 4, in lines 359 to 365, inclusive, by striking out subsection 4(f) and inserting in the place thereof the following subsection:

“(f). No permit may be issued, and no project approved, by the wind energy permitting board without a vote of approval for the project by residents through a ballot question at the next regularly scheduled municipal election in the community where the project will be located,

provided however, that if no municipal election is scheduled within 365 days from the date the application has been filed, the community shall hold a special municipal election. The wind energy permitting board shall file with the clerk of the local governmental body a written decision, based upon a majority vote of the board, within 180 days from the date of the municipal election where the ballot question was taken, unless the time period is extended by mutual agreement by the board and the applicant, and the agreement is filed with the city or town clerk prior to the expiration of the 180 day period. Failure to file a written decision or extension within the 180 day period shall result in a constructive approval of the application, provided the project was approved in the above manner by ballot question. unless a municipal board has made a timely referral of an application to a regional planning agency pursuant to subsection (l).”.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Guyer; and on the roll call 61 members voted in the affirmative and 87 in the negative.

[See Ye and Nay No. 432 in Supplement.]

Therefore the amendment was rejected. The same member then moved that this vote be reconsidered.

After debate on the motion to reconsider (Mr. Mariano of Quincy being in the Chair), the sense of the House was taken by yeas and nays at the request of Mr. Guyer; and on the roll call (Mr. Petrolati of Ludlow being in the Chair) 25 members voted in the affirmative and 122 in the negative.

[See Ye and Nay No. 433 in Supplement.]

Therefore the motion to reconsider was negative.

Mr. Guyer of Dalton then moved to amend the bill in section 4, in lines 360 and 362 and also in line 363, by striking out the figures “120” and inserting in place thereof, in each instance, the figures “180”.

After debate on the question on adoption of the amendments, the sense of the House was taken by yeas and nays at the request of the same member; and on the roll call 50 members voted in the affirmative and 98 in the negative.

[See Ye and Nay No. 434 in Supplement.]

Therefore the amendments were rejected.

Mr. Guyer then moved to amend the bill by adding the following section:

“SECTION 15. Notwithstanding any general or special law to the contrary, Chapter 132A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after Section 18 the following section:—

Section 19. Any lands or easements taken or acquired for natural resource purposes under Article XCVII of the amendments of the Constitution, shall be subject to a moratorium prohibiting industrial development, including energy, on said lands, for a period of twenty-five years after any disposition or change of use.”.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of

Amendment rejected,—yea and nay No. 432.

Motion to reconsider negative,—yea and nay No. 433.

Amendments rejected,—yea and nay No. 434.

Amendment rejected,—

the same member; and on the roll call 34 members voted in the affirmative and 115 in the negative.

yea and nay No. 435.

[See Ye and Nay No. 435 in Supplement.]

Therefore the amendment was rejected.

Mr. Fernandes of Milford then moved to amend the bill in section 3, in lines 38 and 39, by striking out the words “a municipal board appointed under section 3 of chapter 25D or if no board has been appointed”; and in section 4, in lines 298 and 299, by striking out the words “a municipal board appointed under section 3 or if no board has been appointed”. The amendments were rejected.

The same member then moved to amend the bill in section 4, in lines 308 to 321, inclusive, by striking out subsection 3 and inserting in place thereof the following:

“Section 3. Within a local government body designated as a significant wind resource area pursuant to section 2, the planning board shall serve as the wind energy permitting board.”.

The amendment was rejected.

Mr. Fernandes then moved to amend the bill in section 4, in line 357, by inserting after the word “zoning” the words “dimensional requirements”, and in said section, in line 358, by inserting after the word “requirements.” the following sentence “The board shall specifically not be the authority to waive zoning use requirements.”. The amendments were rejected.

Mr. Fernandes of Milford then moved to amend the bill in section 3, in lines 251 and 252; and in section 4, in lines 420, 422, 425 and 426, by striking out the word “superior” and inserting in place thereof, in each instance, the word “land”. The amendments were rejected.

The same member then moved to amend the bill in section 3, in line 212, by striking out the words “modify conditions or”. The amendment was rejected.

Mr. Peterson of Grafton then moved to amend the bill by adding the following section:

“SECTION 15. Provided further, that this act shall not take effect in any municipality designated by the Department of Energy Resources as containing significant wind resource areas without a vote to accept such designation by a majority of members of the town council, or in a city having a Plan D or Plan E charter, the city manager and the city council and in any other city the mayor and city council and in towns a majority vote of those present and voting at a town meeting and approval by the board of selectmen.”.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of the same member; and on the roll call 61 members voted in the affirmative and 89 in the negative.

Amendment rejected,—yea and nay No. 436.

[See Ye and Nay No. 436 in Supplement.]

Therefore the amendment was rejected.

Mr. Peterson then moved to amend the bill in section 3, in lines 155 to 190, inclusive, by striking out subsection (g), and in lines 236 to 241, inclusive, by striking out the words “; provided, however, that these regulations shall not require any data related to the necessity or

Wind projects,—
land based.

cost of the proposed generating facility, except for data related to the costs or economic feasibility associated with the mitigation, control or reduction of the environmental impacts of the proposed generating facility, so that the division can make an informed determination as to the ability of the applicant to afford to comply with conditions imposed by an agency, municipality or the state”.

Amendments
rejected,—
yea and nay
No. 437.

After debate on the question on adoption of the amendments, the sense of the House was taken by yeas and nays at the request of the same member; and on the roll call 47 members voted in the affirmative and 102 in the negative.

[See Yea and Nay No. 437 in Supplement.]

Therefore the amendments were rejected.

Mr. Guyer of Dalton then moved to amend the bill by adding the following section:

“SECTION 15. Any real estate broker or agent licensed in the Commonwealth representing a seller of real property located in an area designated by the Department of Energy resources as a ‘significant wind resource area’ shall cause the following language to be included in any Offer or Purchase and Sale Agreement entered into by said broker, agent, or seller:— NOTICE TO BUYER: The subject property is located in an area designated by the Massachusetts Department of Energy Resources as a ‘significant wind resource area’. This means that a wind energy facility could be allowed in that area. A wind energy facility is defined by law as ‘a facility including blades, turbines, towers, test towers, supports, foundations and any ancillary facilities such as roadways, transmission or distribution lines, substations, and any other buildings, structures, or equipment whose primary purpose is to support the generation, transmission, and delivery of at least two megawatts of electricity powered by wind.’ This law states that ‘Any existing zoning and non-zoning requirements of the municipalities of the municipality’s local laws, regulation, policies, or other regulatory requirements may be waived’ to allow such a facility.”.

After debate the amendment was rejected.

Ms. Wolf of Cambridge then moved to amend the bill in section 3, in line 84, by inserting after the word “Association” the following “; a scientist who is an expert in ecology and conservation; a scientist or engineer who is an expert in wind energy; a public health official with expertise in audiology”. The amendment was adopted.

Mr. Guyer of Dalton then moved to amend the bill by adding the following five sections:

“SECTION 15. Section 56C of Chapter 164 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out in line 17, the words ‘ten nor more than one hundred’, and inserting in the place thereof the following:— five hundred nor more than ten thousand.

SECTION 16. Section 56D of said Chapter 164, as so appearing, is hereby amended by striking in its entirety, and inserting in the place thereof the following:—

Any contract entered into by any municipal lighting plant, or municipal lighting plant cooperative, for the construction of a lighting facility, shall be procured using the provisions of chapter 30B, and preference shall be given to corporations based in Massachusetts.

SECTION 17. The General Laws are hereby amended by inserting the following chapter:—

CHAPTER 164C.
PUBLICLY-ASSISTED ENERGY CORPORATIONS
PROCUREMENT.

Section 1. An energy corporation, hereafter known as a corporation, constructing an energy facility, any plant or equipment used to produce, manufacture, or otherwise generate electricity, any ancillary facilities such as roadways, transmission or distribution lines, substations and any other buildings, structures or equipment whose primary purpose is to support the generation and delivery of electricity, which derives at least 10% of project funding from any state or municipal assistance, including but not limited to grants, tax credits, or appropriations, shall be required to comply with the provisions of this section.

Section 2. As used in this chapter, the following words shall, unless the context clearly requires otherwise have the following meanings:

‘Corporation’, any corporation, cooperative, or individual constructing an energy facility which derives at least 10% of project funding from any state assistance, including but not limited to grants, tax credits, or appropriations.

Section 3. A corporation shall maintain a file on each contract for the purchase of any contract related to an assisted energy facility, in the amount of five thousand dollars or more, shall include in such file a copy of all written documents related to said contract. Written documents required by this chapter shall be retained by the corporation for at least six years from the date of final payment under the contract, and the records shall be open to public inspection.

(a) For the procurement of a supply or service in the amount of \$5,000 or greater, but less than \$25,000, a corporation shall seek written or oral quotations from no fewer than three persons customarily providing such supply or service. The corporation shall record the names and addresses of all persons from whom quotations were sought, the names of the persons submitting quotations and the date and amount of each quotation. A corporation may require that procurements in amounts of less than \$25,000 be based on written quotations or be subject to the provisions of section five.

(b) The corporation shall award the contract to the responsible person offering the needed quality of supply or service at the lowest quotation.

(c) A procurement in the amount of less than \$5,000 shall be obtained through the exercise of sound business practices.

Section 4. (a) Except as permitted under section five or section seven, award of procurement contracts in the amount of \$25,000 or more, other than contracts for the procurement of real property, shall conform to the competitive sealed bidding procedures set forth in this section.

(b) A corporation shall issue an invitation for bids for a procurement contract. The invitation for bids shall include:

(1) the time and date for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the corporation;

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land based.

(2) the purchase description and all evaluation criteria to be utilized pursuant to paragraph (e); and

(3) all contractual terms and conditions applicable to the procurement.

The invitation for bids may incorporate documents by reference; provided, however, that the invitation for bids specifies where prospective bidders may obtain the documents. The procurement officer shall make copies of the invitation for bids available to all persons on an equal basis.

(c) The procurement officer shall give public notice of the invitation for bids a reasonable time prior to the date for the opening of bids. The notice shall:

(1) indicate where, when and for how long invitations for bids may be obtained;

(2) describe the supply or service desired;

(3) if award of the contract is subject to the approval of any board, committee, commission or other body, so state and identify each such body;

(4) remain posted, for at least two weeks, in a conspicuous place in or near the offices of the corporation until the time specified in the invitation for bids; and

(5) be published at least once, not less than two weeks prior to the time specified for the receipt of bids, in a newspaper of general circulation within the area served by the corporation. The corporation may distribute copies of the notice to prospective bidders, and may compile and maintain lists of prospective bidders to which notices may be sent.

(6) shall state that preference shall be given to Massachusetts corporations.

(d) A representative appointed by the corporation shall open bids publicly in the presence of one or more witnesses, and the representative and said witnesses shall sign a statement under penalties of perjury listing the names of all bidders and the amounts of their bids and declaring that said list is a complete and accurate list of bids opened in the presence of said witnesses. Such statement, or a certified copy thereof, shall be filed with the contract.

(e) The corporation shall evaluate a bid based solely on the requirements and criteria set forth in the invitation for bids. Such criteria shall include the standards by which the procurement officer will determine acceptability as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose.

(f) The corporation shall unconditionally accept a bid without alteration or correction, except as provided in this paragraph. A bidder may correct, modify, or withdraw a bid by written notice received in the office designated in the invitation for bids prior to the time and date set for the bid opening. After bid opening, a bidder may not change the price or any other provision of the bid in a manner prejudicial to the interests of the corporation or fair competition. The corporation shall waive minor informalities or allow the bidder to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the corporation shall correct the mistake to reflect the intended correct bid and so notify the bidder in writing, and the bidder may not withdraw the bid. A bidder may

withdraw a bid if a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident.

(g) The corporation shall award the contract to the lowest responsible and responsive bidder. A contract requiring payment to the corporation of a net monetary amount shall be awarded to the highest responsible and responsive bidder. The corporation shall award the contract by written notice to the selected bidder within the time for acceptance specified in the invitation for bids. The time for acceptance may be extended for up to 45 days by mutual agreement between the corporation and the apparent lowest responsible and responsive bidder or, for a contract requiring payment to the corporation, by mutual agreement between the corporation and the highest apparent responsible and responsive bidder.

Section 5. (a) A corporation may enter into procurement contracts in the amount of \$25,000 or more utilizing competitive sealed proposals, in accordance with the provisions of this section. The corporation shall not solicit competitive sealed proposals unless he has determined in writing that selection of the most advantageous offer requires comparative judgments of factors in addition to price, specifying the reasons for his determination.

(b) The corporation shall solicit proposals through a request for proposals. The request for proposals shall include:

(1) the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, the maximum time for proposal acceptance by the corporation;

(2) the purchase description and all evaluation criteria that will be utilized pursuant to paragraph (e); and

(3) all contractual terms and conditions applicable to the procurement provided that the contract may incorporate by reference a plan submitted by the selected offeror for providing the required supplies or services. The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective offerors may obtain the documents. The request for proposals shall provide for the separate submission of price, and shall indicate when and how the offerors shall submit the price. The chief procurement officer shall make copies of the request for proposals available to all persons on an equal basis.

(c) Public notice of the request for proposals shall conform to the procedures set forth in paragraph (c) of section five.

(d) The corporation shall open the proposals publicly. Notwithstanding the provisions of section seven of chapter four, until the completion of the evaluations, or until the time for acceptance specified in the request for proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening of proposals the corporation shall prepare a register of proposals which shall include the name of each offeror and the number of modifications, if any, received. The register of proposals shall be open for public inspection. The corporation may open the price proposals at a later time, and shall open the price proposals so as to avoid disclosure to the individuals evaluating the proposals on the basis of criteria other than price.

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(e) The corporation shall designate the individual or individuals responsible for the evaluation of the proposals on the basis of criteria other than price. The designated individuals shall prepare their evaluations based solely on the criteria set forth in the request for proposals. Such criteria shall include all standards by which acceptability will be determined as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose, and shall also include all other performance measures that will be utilized. The evaluations shall specify in writing:

(1) for each evaluation criterion, a rating of each proposal as highly advantageous, advantageous, not advantageous, or unacceptable, and the reasons for the rating;

(2) a composite rating for each proposal, and the reasons for the rating; and

(3) revisions, if any, to each proposed plan for providing the required supplies or services which should be obtained by negotiation prior to awarding the contract to the offeror of the proposal.

(f) A proposal may be corrected, modified or withdrawn to the extent provided in paragraph (f) of section five.

(g) The corporation shall determine the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals. The corporation shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement. The corporation may condition an award on successful negotiation of the revisions specified in the evaluation, and shall explain in writing the reasons for omitting any such revision from a plan incorporated by reference in the contract.

(h) If the corporation awards the contract to an offeror who did not submit the lowest price, the corporation shall explain the reasons for the award in writing, specifying in reasonable detail the basis for determining that the quality of supplies or services under the contract will not exceed the corporation's actual needs.

(i) If a contract requiring payment to the corporation of a net monetary sum is awarded to an offeror who did not submit the highest price, the corporation shall explain the reasons for the award in writing as set forth in paragraph (h).

Section 6. Whenever the time required to comply with a requirement of this chapter would endanger the health or safety of the corporation or their assisted property a corporation may make an emergency procurement without following that requirement. An emergency procurement shall be limited to only supplies or services necessary to meet the emergency and shall conform to the requirements of this chapter to the extent practicable under the circumstances. The procurement officer shall make a record of each emergency as soon after the procurement as practicable, specifying each contractor's name, the amount and the type of each contract, a listing of the supply or service provided under each contract, and the basis for determining the need for an emergency procurement.

The corporation shall submit a copy of this record at the earliest possible time to the state secretary for placement in any publication established by the state secretary for the advertisement of procurements.

Section 7. A person submitting a bid or a proposal for the procurement or disposal of supplies or services to any corporation shall certify in writing, on the bid or proposal, as follows:

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(Signature of individual submitting bid or proposal)

(Name of business)

Section 8. No person shall cause or conspire to cause the splitting or division of any procurement, specification, invitation for bids, request for proposals, proposal, solicitation, or quotation for the purpose of evading a requirement of this chapter.

Section 9. (a) Unless otherwise provided by law and subject to paragraph (b), a corporation may enter into a contract for any period of time which serves the best interests of the corporation; provided, however, that the corporation shall include in the solicitation the term of the contract and conditions of renewal, extension or purchase, if any. The corporation shall not enter into a contract unless funds are available for the first year at the time of contracting. Payment and performance obligations for succeeding years shall depend on the availability and appropriation of funds.

(b) The invitation for bids, request for proposals, or other solicitation of any contract for a term exceeding one year, including a renewal, extension or option, shall state, in addition to the other information required by this chapter:

(1) the amount of supplies or services required for the proposed contract period, and whether such amount is the actual amount required or an estimate;

(2) that the bidder or offeror shall give a unit price for each supply or service, and that the unit price shall remain the same throughout the contract, except to the extent that the solicitation and resulting contract provides for price adjustments;

(3) that the corporation shall cancel the contract if funds are not appropriated or otherwise made available to support continuation of performance in any year succeeding the first year;

(4) whether the bidder or offeror shall submit prices for:

(i) the first year only;

(ii) the entire time of performance only; or

(iii) both the first year and the entire time of performance; and

(5) how the award will be determined, including, if the contractor submits prices for the first year and the entire time of performance, how the prices will be compared. When a contract is to contain an option for renewal, extension, or purchase, the solicitation shall include notice of the provision. The corporation shall retain sole discretion in exercising the option, and no exercise of an option shall be subject to agreement or acceptance by the contractor.

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(c) When funds are not available to support continuation of performance in a subsequent year, the procurement officer shall cancel the contract.

(d) The corporation shall not exercise an option for renewal, extension or purchase unless the corporation, after reasonable investigation of costs and benefits, has determined in writing that the exercise of the option is more advantageous than alternate means of procuring comparable supplies or services.

Section 10. The corporation may increase the quantity of supplies or services or both specified in a contract provided:

- (1) the unit prices remain the same or less;
- (2) the procurement officer has specified in writing that an increase is necessary to fulfill the actual needs of the corporation and is more economical and practical than awarding another contract;
- (3) the parties agree to the increase in writing; and
- (4) the increase in the total contract price does not exceed 25 per cent but a contract for the purchase of gasoline, special fuel, fuel oil, or other ice and snow control supplies shall not be subject to this limit; and

(5) the corporation, with the agreement of the contractor, may reduce the unit price for supplies or services or both specified in a contract to be paid by the corporation at any time during the term of the contract or when an option to renew, extend or purchase is exercised.

Section 11. Unless no other manner of description suffices, and the corporation so determines in writing, setting forth the basis for the determination, all specifications shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary supply or service, or a procurement from a sole source.

Section 12. (a) A corporation shall dispose of a tangible supply, no longer useful to the corporation but having resale or salvage value, in accordance with this section. This section does not apply to the disposal of assisted real property.

(b) The corporation shall offer such supply through competitive sealed bids, public auction, or established markets.

(c) Notice of sale by bid or auction shall conform with the procedures set forth in paragraph (c) of section four. The notice shall indicate the supply offered for sale, designate the location and method for inspection of such supply, state the terms and conditions of sale including the place, date and time for the bid opening or auction, and state that the corporation retains the right to reject any and all bids.

(d) If the corporation rejects the bid of the highest responsive bidder, the corporation may:

- (1) negotiate a sale of such supply so long as the negotiated sale price is higher than the bid price; or
- (2) resolicit bids.

(e) A corporation may trade-in a supply listed for trade-in in the invitation for bids or request for proposals.

(f) For a supply with an estimated net value of less than \$5,000, the corporation shall dispose of such supply using written procedures approved by the corporation.

(g) Notwithstanding any other requirement of this section, a corporation may by majority vote, unless otherwise prohibited by law, dispose of a tangible supply no longer useful to the corporation but having resale or salvage value, at less than the fair market value to a charitable organization which has received a tax exemption from the United States by reason of its charitable nature.

Section 13. (a) If a corporation duly authorized by general or special law to engage in such transaction determines that it shall rent, convey, or otherwise dispose of real property, the corporation shall declare the property available for disposition and shall specify the restrictions, if any, that it will place on the subsequent use of the property.

(b) The corporation shall determine the value of the property through procedures customarily accepted by the appraising profession as valid.

(c) A corporation shall solicit proposals prior to:

(1) acquiring by purchase or rental real property or an interest therein from any person at a cost exceeding twenty-five thousand dollars; or

(2) disposing of, by sale or rental to any person, real property or any interest therein, determined in accordance with paragraph (b) to exceed twenty-five thousand dollars in value.

(d) The corporation shall place an advertisement inviting the submission of proposals in a newspaper with a circulation in the locality sufficient to inform the people of the affected locality. The corporation shall publish the advertisement at least once a week for two consecutive weeks. The last publication shall occur at least eight days preceding the day for opening proposals. The advertisement shall specify the geographical area, terms and requirements of the proposed transaction, and the time and place for the submission of proposals. In the case of the acquisition or disposition of more than twenty-five hundred square feet of real property, the corporation shall also cause such advertisement to be published, at least thirty days before the opening of proposals, in the central register published by the state secretary pursuant to section twenty A of chapter nine.

(e) The corporation may shorten or waive the advertising requirement if:

(1) the corporation determines that an emergency exists and the time required to comply with the requirements would endanger the health or safety of the people or their assisted property; provided, however, that the corporation shall state the reasons for declaring the emergency in the central register at the earliest opportunity; or

(2) in the case of a proposed acquisition, the corporation determines in writing that advertising will not benefit the corporation's interest because of the unique qualities or location of the assisted property needed. The determination shall specify the manner in which the assisted property proposed for acquisition satisfies the unique requirements. The corporation shall publish the determination and the reasons for the determination, along with the names of the parties having a beneficial interest in the property pursuant to section forty J of chapter seven, the location and size of the assisted

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property, and the proposed purchase price or rental terms, in the central register not less than thirty days before the corporation executes a binding agreement to acquire the assisted property.

(f) Proposals shall be opened publicly at the time and place designated in the advertisement. The corporation shall submit the name of the person selected as party to a real property transaction, and the amount of the transaction, to the state secretary for publication in the central register.

(g) If the corporation decides to dispose of assisted property at a price less than the value as determined pursuant to paragraph (b), the corporation shall publish notice of its decision in the central register, explaining the reasons for its decision and disclosing the difference between such value and the price to be received.

Section 14. (a) All contracts in the amount of five thousand dollars or more shall be in writing, and the corporation shall make no payment for a supply or service rendered prior to the execution of such contract.

(b) A person who causes or conspires with another to cause a contract to be solicited or awarded in violation of a provision of this chapter shall forfeit and pay to the appropriate corporation a sum of not more than twenty thousand dollars for each violation. In addition, the person shall pay double the amount of damages sustained by the corporation by reason of the violation, together with the costs of any action. If more than one person participates in the violation, the damages and costs may be apportioned among them.

(c) The inspector general shall have authority to institute a civil action to enforce paragraph (b) if authorized by the attorney general.

SECTION 18. Section 19 of Chapter 775 of the Acts of 1975 is hereby amended by striking subsection (f) and inserting in the place thereof the following subsection:

(f) Wherever the corporation has primary responsibility for the construction or operation of any electric power facility within the commonwealth, no contract for construction, reconstruction, alteration, remodeling repair or demolition of the facility or equipment, supplies or materials for the facility, except in cases of special emergency involving the health, safety or welfare of the people or their property, shall be awarded unless proposals for the same have been invited by advertisement in a newspaper published in the city of Boston, as well as a newspaper published in the county of said facility, such publication to be at least one week before the time specified for the opening of said proposals. Such advertisements shall state the time and place for opening the proposals in answer to said advertisement, and shall require the company to select the lowest qualified proposal, with preference to companies based in Massachusetts. All such proposals shall be opened in public. No bid or contract shall be split or divided for the purpose of evading these requirements.

Sections twenty-six to twenty-nine, inclusive, and sections forty-four A to forty-four L, inclusive, of chapter one hundred and forty-nine and sections thirty-nine F to thirty-nine N, inclusive, of chapter thirty of the General Laws shall apply to the corporation.

SECTION 19. Chapter 535 of the Acts of 2008 is hereby amended by striking Section 9.”

The amendment was rejected.

Mr. Scaccia of Boston then moved to amend the bill in section 14 by adding the following sentence “The permitting process contained in chapter 25D of the General Laws or sections 17 to 19, inclusive, of chapter 25A of the General Laws shall not apply to projects that will have an adverse effect on properties that are listed or eligible for listing in the National or State Registers of Historic Places.”. The amendment was adopted.

Mr. Madden of Nantucket then moved to amend the bill in section 4, in line 357, by striking out the words “zoning and”; and the amendment was rejected.

The same member then moved to amend the bill by adding the following section:

“SECTION 15. Any local government body that has zoned for renewable energy shall be exempt from this act.”.

The amendment was rejected.

Representatives Madden of Nantucket and Peake of Provincetown then moved to amend the bill in section 4, in line 415, by striking out the words “or a regional planning agency”, in lines 418 and 419, by striking out the words “or rendered by a regional planning agency”, and by inserting after line 426 the following subsection:

“(iii) An appeal brought by the applicant or by any other proponent of a wind energy facility of a decision of a regional planning agency denying a permit or granting a permit with conditions shall be governed by the enabling statute of the applicable regional planning agency and this appeal shall be the exclusive means of review of such decisions of a regional planning agency.”.

The amendments were rejected.

Mr. Madden then moved to amend the bill by adding the following section:

“SECTION 15. This act shall apply to any city or town which accepts the provisions of this act in accordance with section 4 of chapter 4 of the General Laws.”.

The amendment was rejected.

The same member then moved to amend the bill in section 3, in line 114, by inserting after the word “municipality” the words “other local governmental body or other local governmental bodies acting jointly on a regional basis whose application(s) have been approved by a host municipality’s wind energy permitting board under this chapter., in lines 117 and 118, by inserting after the word “municipality” the words “other local governmental body or other local governmental bodies acting jointly on a regional basis”; and by inserting after section 9 the following three sections:

“SECTION 9A. Subsection (c) of section 10 of chapter 25A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding, in line 23, after the words, ‘governmental body’ the following words:— or other local governmental bodies acting jointly on a regional basis.

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SECTION 9B. Said subsection (c) of said section 10 of said chapter 25A, as so appearing, is hereby further amended by inserting after the word, ‘municipality’ in lines 29, 42 and 43 the following words:— other local governmental bodies or other local governmental bodies acting jointly on a regional basis.

SECTION 9C. Said subsection (c) of said section 10 of said chapter 25A, as so appearing, is hereby further amended by inserting after the words, ‘designated locations’, in line 27/28, the following words:— within the municipality, other local governmental bodies or other local governmental bodies acting jointly on a regional basis.”.

The amendments were rejected.

Pending the question on passing the bill, as amended, to be engrossed, in concurrence, further consideration thereof was postponed, on motion of Mr. Finegold of Andover, until tomorrow and specially assigned to the hour of one o’clock P.M.

Orders of the Day.

House bills

Relative to affiliate transfers (House, No. 959);

Relative to discharge of certain mortgages (House, No. 996) (its title having been changed by the committee on Bills in the Third Reading);

Regulating elections in the town of Yarmouth (House, No. 4243);

Relative to the Massachusetts Credit Union Share Insurance Corporation (House, No. 4483) (its title having been changed by the committee on Bills in the Third Reading);

Exempting all positions in the police department of the town of Provincetown from the civil service law (House, No. 4656) (its title having been changed by the committee on Bills in the Third Reading); and

Relative to the composition of the licensing board for the city of Pittsfield (House, No. 4682); and

The House Resolve declaring Chapter 397 of the Acts of 2008 “Darnell’s Law” (House, No. 1139);

Severally reported by the committee on Bills in the Third Reading to be correctly drawn, were read a third time; and they were passed to be engrossed. Severally sent to the Senate for concurrence.

House bills

Relative to the provision of health insurance and other benefits in the town of Phillipston (House, No. 4196);

Relative to special license plates for certain military personnel (printed in House, No. 4588); and

Providing certain health insurance for Richard D. Valcourt (House, No. 4776).

Severally were read a second time; and they were ordered to a third reading.

The Senate Bill authorizing certain developments in the Fort Point Channel in the city of Boston (Senate, No. 2376) was read a second time.

Third reading
bills and
resolve.

Second
reading
bills.

Second reading
bill amended.

The amendments previously recommended by the committee on Ways and Means,— that the bill be amended in section 1, in line 12, by striking out the following “and chapter 170 of the acts of 1880” and inserting in place thereof the following “, chapter 170 of the acts of 1880 and chapters 402 and 403 of the acts of 1939”,— were adopted.

The bill (Senate, No. 2376, amended) then was ordered to a third reading.

The House Bill relative to the registration of real estate appraisers (House, No. 277) was read a second time.

The amendments previously recommended by the committee on Ways and Means,— that the bill be amended in section 1, in line 2, by striking out the year “2004” and inserting in place the year “2008”; and in section 4, in line 15, by striking out the following “Section 1” and inserting in place thereof the following “Sections 1 and 3”,— were adopted.

The bill (House No. 277, amended) then was ordered to a third reading.

The House Bill relative to the registration and inspection of street rods and custom vehicles (House, No. 4557) was read a second time.

The amendment previously recommended by the committee on Ways and Means,— that the bill be amended by substitution of a bill with the same title (House, No. 4871),— was adopted.

The substitute bill (House, No. 4871) then was ordered to a third reading.

Second reading
bill amended.

Id.

The House Bill relative to a special commission on seafood marketing (House, No. 706, changed) was read a second time.

Pending the question on adoption of the amendment previously recommended by the committee on Ways and Means,— that the bill be amended by substitution of a bill with the same title (House, No. 4872),— Mr. Jones of North Reading moved to amend it in section 1, in lines 10 to 19, inclusive, by striking out the sentence contained therein and inserting in place thereof the following sentence: “The commission shall consist of 15 members: 2 members from the house of representatives, 1 of whom shall be appointed by the speaker of the house of representative, and 1 of whom shall be appointed by the house minority leader; 2 members of the senate, 1 of whom shall be appointed by the senate president, and 1 of whom shall be appointed by the senate minority leader; 1 representative of the department of agriculture resources; 1 representative of the division of marine fisheries; and 9 of whom shall be appointed by the governor 1 of whom shall be a representative of the Massachusetts marine fisheries institute; 1 of whom shall be a representative of the Massachusetts fishermen’s partnership; 1 of whom shall be a member of a wholesale seafood dealer; 1 of whom shall be a member of a seafood specialty retail business; 2 of whom shall be members of a fishing industry advocacy organization; and 3 of whom shall be members of the commercial fishing industry, 1 of whom shall be a representative of the

Seafood
marketing,—
study.

groundfish industry, 1 of whom shall be a representative of the scallop industry and 1 of whom shall be a representative of the lobster industry." The further amendment was adopted.

The amendment recommended by the committee on Ways and Means, as amended, then also was adopted; and the substituted bill (House, No. 4872, amended) was ordered to a third reading.

Order.

On motion of Mr. DeLeo of Winthrop,—

Ordered, That when the House adjourns today, it adjourn to meet tomorrow at one o'clock P.M.

Next
sitting.

Mr. Fagan of Taunton then moved that as a mark of respect to the memory of Peter B. Gay, a member of the House from Taunton from 1949 to 1958, inclusive, the House adjourn; and the motion prevailed.

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at twelve minutes after six o'clock P.M., on motion of Mr. deMacedo of Plymouth (Mr. Donato of Medford being in the Chair), the House adjourned, to meet the following day at one o'clock P.M.