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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Tuesday, March 9, 2010.

Met according to adjournment at one o'clock P.M. (Mr. Rosenberg in the Chair)

Reports of Committees.

By Ms. Candaras, for the committee on Children, Families and Persons with Disabilities, on petition, a Bill removing barriers to financial stability and asset development for low to moderate income families (Senate, No. 38, changed in line 16, by striking out the number "2009" and inserting in place thereof the number "2010");

By the same Senator, for the same committee, on petition, a Bill directing the Department of Transitional Assistance to enact regulations providing for direct payments to property owners of behalf of department recipients (Senate, No. 76, changed in line 2, by striking out the words "Transitional Assistance" and inserting in place thereof the words "Housing and Community Development"; and in the Bill's title by striking out the words "Transitional Assistance" and inserting in place thereof the words "Housing and Community Development");

By the same Senator, for the same committee, on petition, a Bill protecting and improving the Emergency Aid to the Elderly, Disabled and Children (EAEDC) program (Senate, No. 82, changed in line 23, by striking out the word "immigrant" and inserting in place thereof the word "imminent"); and

By Mr. O'Leary, for the committee on Education, on petition (accompanied by bill, Senate No. 264), a Bill relative to high school graduation requirements (Senate, No. 2315) (Representative Sandlin of Agawam dissenting);

Severally read and, under Senate Rule 27, referred to the committee on Ways and Means.

By Mr. Downing, for the committee on Revenue, on petition, a Bill relative to property tax deferments for senior citizens in the town of Winchendon (Senate, No. 1227) [Local approval received];

Read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

PAPERS FROM THE HOUSE.

A Bill relative to John Bevelaqua's sick leave bank (House, No. 4554,-- on House, No. 4503), -- **was read and, under Senate Rule 27, referred to the committee on Ways and Means.**

Bills

Authorizing the town of Medway to continue the employment of Fire Chief Paul L. Trufant (House, No. 4380,-- on petition) [Local approval received]; and

Authorizing the town of Arlington to place a certain question relative to the sale of alcoholic beverages at a town election (House, No. 4403,-- on petition) [Local approval received];

Were severally read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

There being no objection, at one minute past one o'clock P.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at fourteen minutes past one o'clock P.M., the Senate reassembled, the President in the Chair.

The President, members, guests and employees then recited the pledge of allegiance to the flag.

Resolutions.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:-

Resolutions (filed by Mr. Hedlund) “honoring Town Moderator Allen M. Bornheimer of the town of Duxbury”; and Resolutions (filed by Messrs. Hedlund and Morrissey) “congratulating the Union Congregational Church of Weymouth and Braintree on its two hundredth anniversary.”

PAPERS FROM THE HOUSE

Engrossed Bills.

An engrossed Bill authorizing the appointment of special police officers in the town of Dracut (see House, No. 1143) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and signed by the President and laid before the Governor for his approbation.

An engrossed Bill validating the actions taken at a special town meeting of the town of Lynnfield (see House, No. 4498) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage was passed to be enacted, two-thirds of the members present having voted in the affirmative, and was signed by the President and laid before the Governor for his approbation.

Orders of the Day.

The Orders of the Day were considered, as follows:

The Senate Bill relative to payment for services rendered for extraordinary storm damage in the town of Templeton (Senate, No. 2231),-- **was read a second time and ordered to a third reading.**

The House Bill providing for the financial stability of the city of Lawrence (House, No. 4516, amended),-- **was read a third time.**

Pending the question on passing the bill to be engrossed, Messrs. Tisei, Tarr, Knapik and Hedlund moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2316. **After debate and pending the question on adoption of the amendment for the purpose of a Democratic caucus, at a quarter before two o'clock P.M., the President declared a recess subject to the call of the Chair; and, at eight minutes past three o'clock P.M., the Senate reassembled, the President in the Chair.**

Orders of the Day.

The Orders of the Day and were further considered, as follows:

The House Bill providing for the financial stability of the city of Lawrence (House, No. 4516, amended),-- **was considered, the main question being on passing it to be engrossed.**

The pending amendment, previously moved by Messrs. Tisei, Tarr, Knapik and Hedlund, was again considered; and, after debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at a quarter past three o'clock P.M., on motion of Mr. Tisei, as follows, to wit (*yeas 7 — nays 28*) [**Yeas and Nays No. 196**]:

INSERT ROLL CALL “196”

The yeas and nays having been completed at twenty minutes past three o'clock P.M., the amendment was rejected.

Mr. Panagiotakos moved that the bill be amended in the first sentence of subsection (a) of section 8 by inserting after the words “upon abolition of” the following words:- “the overseer or”; by striking out the first sentence of paragraph (1) of subsection (c) of section 8 and inserting in place thereof the following sentence:- “The mayor shall appoint the officer from a list of 3 names submitted by the secretary, for a term of not more than 3 years, as provided in this subsection.”; and by inserting after section 10 the following 2 sections:-

“SECTION 10A. (a) If the board established by section 6 concludes that its powers are insufficient to restore fiscal stability to the city, it shall so notify the secretary, and shall forward to the secretary a statement of the reasons why it has been unable to restore fiscal stability to the city. Upon receipt of such statement, the secretary shall recommend to the governor that the governor file legislation immediately to terminate the existence of the board, notwithstanding section 6, and the secretary shall provide the governor with the recommended legislation under subsection (b).

(b) The legislation provided by the secretary shall include but not be limited to:-

(1) the appointment of a receiver who shall have all powers of the finance control board under section 7, which shall continue in the receiver and shall remain through the period of any receivership, the recommended term for the receivership and authorization for the secretary to, at any time and without cause, remove the receiver and appoint a successor or terminate the receivership;

(2) the power to exercise any function or power of any municipal officer or employee, whether elected or otherwise, specifically including the following powers relative to building and zoning:

(i) to order the laying out, locating anew or discontinuing of streets and ways within the city;

(ii) to regulate the construction of buildings;

(iii) to implement such changes to the city's zoning ordinance as are necessary; provided, however, that the zoning ordinance continues to promote public safety, health and welfare; provided, further, that no zoning change shall affect or interfere with the integrity of existing residential districts; provided, further, that no such proposed zoning changes shall restrict structures or uses lawfully existing or lawfully begun before the effective date of the zoning change; and

(3) the power to file a petition in the name of the city under Chapter 9 of Title 11 of the United States Code, and to act on the city's behalf in any such proceeding; and

(4) the abolition of the office of mayor and provide that the receiver shall exercise all the powers of the mayor under the General Laws, special laws, the city charter and ordinances; provided, however, that other elected officials of the city shall continue to be elected in accordance with the city charter, and shall serve solely in an advisory capacity to the receiver. The secretary shall determine the salary of the receiver, which salary shall be payable by the city.

(c) The procedure for implementing changes in zoning ordinances as provided in section 5 of chapter 40A of the General Laws shall not govern such changes in the city during the time the receiver is in operation.

(d) The receiver shall not implement a zoning change until a public hearing has been held at which interested persons shall have an opportunity to be heard. The public hearing shall be held within 60 days after the date on which the board originally proposed the zoning change. Notice of the time and place of the public hearing, of the subject matter sufficient for identification, and of the place where texts and maps of the zoning change may be inspected shall be published in a newspaper of general circulation in the city once in each of 2 successive weeks; with the first such publication taking place no fewer than 14 days before the day of the hearing. Notice of the public hearing shall also be posted in a conspicuous place in city hall for no fewer than 14 days before the day of the hearing.

(e) Notice of a proposed zoning change under this section shall be sent to any nonresident property owner who files an annual request for such notice with the city clerk no later than January 1 for the upcoming year. The receiver shall establish a reasonable fee to cover the cost of providing these notices.

SECTION 10B. Notwithstanding chapter 150E of the General Laws or any other general or special law to the contrary, a collective bargaining agreement entered into by the city or the school department after the effective date of this act shall be subject to the approval of the overseer or finance control board if the overseer or finance control board is in effect at the time. No collective bargaining agreement shall be approved under this section unless the overseer or finance control board provides written certification to the secretary that after an evaluation of all pertinent financial information reasonably available, the city's financial resources and revenues are, and will continue to be, adequate to support such collective bargaining agreement without a detrimental impact on the continuous provision of the existing level of municipal services. A decision, by the overseer or finance control board, to disapprove of a collective bargaining agreement under this section shall be made in a report to the parties; provided, however, that the report shall specify the disapproved portions of the agreement and the supporting reasons for the disapproval."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-six minutes past three o'clock P.M., on motion of Mr. Panagiotakos, as follows, to wit (*yeas 35 — nays 0*) [**Yeas and Nays No. 197**]:

INSERT ROLL CALL "197"

The yeas and nays having been completed at twenty-nine minutes past three o'clock P.M., the amendment was adopted.

After further remarks, the question on passing the bill, as amended, to be engrossed was determined by a call of the yeas and nays, at a half past three o'clock P.M., on motion of Mr. Panagiotakos, as follows, to wit (*yeas 31 — nays 4*) [**Yeas and Nays No. 198**]:

INSERT ROLL CALL "197"

The yeas and nays having been completed at twenty-two minutes before four o'clock P.M., the bill was passed to be engrossed, in concurrence, with the above amendment and the amendment previously adopted by the Senate. Sent to the House for concurrence in the amendments.

Matters Taken Out of the Notice Section of the Calendar.

There being no objection, the following matters were taken out of the Notice Section of the Calendar and consider, as follows:

The House Bill authorizing the use of revenues from the Groton Sewer Enterprise Fund (House, No. 4354),-- **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The House Bill amending the charter of the town of Groton (House, No. 4355),-- **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The Senate Bill amending the charter in the town of Stoughton relative to filling vacancies among town meeting representatives (Senate No. 2238),-- **was read a third time and passed to be engrossed. Sent to the House for concurrence.**

Reports of a Committee.

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill establishing a sick leave bank for Candace Cabey, an employee of the Trial Court (Senate, No. 2273),-- **ought to pass with an amendment, inserting after the second sentence the following sentence:- "Sick leave bank days shall not be used for absences unrelated to the illness or disability that necessitated the establishment of the sick leave bank as determined by the trial court.";** and by inserting before the enacting clause the following emergency preamble:-

"Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a sick leave bank for a certain employee of the trial court, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience".

There being no objection, the rules were suspended, on motion of Mr. Pacheco, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means. The bill (Senate, No. 2273, amended) was then ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence.

By Mr. Panagiotakos, for the committee on Ways and Means, that the Senate Bill relative to bullying in schools (Senate, No. 2283),-- **ought to pass, with an amendment substituting a new draft with the same title (Senate, No. 2313).**

There being no objection, the rules were suspended, on motion of Ms. Menard, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means. The bill (Senate, No. 2313) was then ordered to a third reading.

By Mr. Panagiotakos, for the committee on Ways and Means, that the House Bill relative to school nutrition (House, No. 4459),-- **ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2314.**

There being no objection, the rules were suspended, on motion of Ms. Chang-Díaz, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means. The bill, as amended, was then ordered to a third reading.

Order Adopted.

Mr. Panagiotakos offered the following order:

Ordered, That, notwithstanding Senate Rule 7 or any other rule to the contrary, the Senate Bill relative to bullying in schools (Senate, No. 2313) and the House Bill relative to child nutrition (House, No. 4459) (having been amended by the Senate on recommendation of the committee on Ways and Means with a new text (Senate, No. 2314), shall be placed in the Orders of the Day for consideration of its third reading on Thursday, March 11, 2010.

All amendments to the Senate Bill relative to bullying in schools (Senate, No. 2313) and the Ways and Means new text (Senate, No. 2314) to the House Bill relative to child nutrition (House, No. 4459) shall be filed electronically in the office of the Clerk of the Senate by 5:00 P.M., on Wednesday, March 10, 2010. All such amendments shall be third-reading amendments, but further amendments in the third degree to such amendments shall be in order. The Clerk shall further specify the procedure and format for filing all amendments, consistent with this order.

No amendments except redrafts and further amendments to filed amendments which have not been filed by the deadline shall be in order unless recommended by the committee on Bills in the Third Reading.

Under the rules, referred to the committee on Ethics and Rules.

Subsequently, Mr. Berry, for the said committee, reported, recommending that the order ought be adopted. The rules were suspended, on motion of Mr. Knapik, and the order was considered forthwith and adopted.

PAPER FROM THE HOUSE.

The House relative to safe driving (House, No. 4475),-- came from the House with the endorsement that the House had NON-concurred in the Senate amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2305, and had asked for a committee of conference on the disagreeing votes of the two branches; and that Representatives Wagner of Chicopee, Costello of Newburyport and Humason of Westfield had been appointed the committee on the part of the House.

On motion of Mr. Tisei, the Senate insisted on its amendment and concurred in the appointment of a committee of conference; and Senators Baddour, Brewer and Hedlund were appointed on the part of the Senate. The bill was returned to the House endorsed accordingly.

Report of a Committee.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Jennifer L. Flanagan for legislation to authorize the Teacher's Retirement Board to include additional compensation in calculating retirement allowance of Nancy Swanson.

Senate Rule 36 was suspended, on motion of Mr. Timilty, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on the Public Service.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Stephen A. Baddour Bruce E. Tarr and Barbara A. L'Italien for legislation to designate a certain a certain overpass in the city of Haverhill as the Captain Richard J. Cashin Overpass.

Senate Rule 36 was suspended, on motion of Mr. Timilty, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on the Transportation. Severally sent to the House for concurrence.

Order Adopted.

On motion of Mr. Pacheco,—

Ordered, That when the Senate adjourns today, it adjourn to meet again on Thursday next at one o'clock P.M., in a full formal session.

On motion of Ms. Menard, at a quarter before four o'clock P.M., the Senate adjourned to meet again on Thursday next at one o'clock P.M.