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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, March 26, 2009.

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

The Senator from Norfolk, Bristol and Middlesex, Mr. Brown, led the Chair (Mr. Rosenberg), members, guests and employees in the recitation of 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. Richard T. Moore, Ms. Jehlen and Mr. Rosenberg) “memorializing the Congress of the United States to enact legislation relative to the collection of sales and use taxes by out-of-state vendors”; Resolutions (filed by Messrs. Morrissey and Brewer, Ms. Candaras, Mr. Eldridge, Ms. Fargo, Mr. Galluccio, Ms. Jehlen and Messrs. Kennedy, Michael O. Moore, Pacheco, Timilty and Tisei) “on the seventy-sixth anniversary of the Civilian Conservation Corps.”; and Resolutions (filed by Mr. Tarr) “honoring Donald H. Bade on the occasion of his eightieth birthday and retirement from the volunteer service with the Parker River Clean Water Association.”

Motion to Reconsider.

Mr. Panagiotakos presented a motion that the Senate reconsider the vote by which, at a previous session, **it had passed to be engrossed, read a third time, ordered to a third reading, adopted the Ways and Means amendment, as amended and adopted the amendment [offered by Mr. Panagiotakos numbered 61 — Corrective Amendment] to the Senate Bill modernizing the transportation systems of the Commonwealth (Senate, No. 10); and, there being no objection, the motion prevailed.**

The same Senator presented an amendment striking out, in Section 5, in subsection (a) of section 58 of proposed chapter 7 of the General Laws, by striking out the words “provided, however, that such operation” and inserting in place thereof the following words:— “provided, however, that such proposal”; By striking out, in said Section 5, in clause (26) of subsection (c) of section 59 of said proposed chapter 7, the word “any” and inserting in place thereof the following words:— “the operator’s”; By striking out, in said Section 5, in clause (27) of said subsection (c) of said section 59 of said proposed chapter 7, by striking out the word “any” and inserting in place thereof the following words:— “the operator’s”;

In Section 20, in section 2 of the proposed chapter 81B, by striking out the words, inserted by amendment #39, “No director shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, no director shall have been a member of the General Court or employee of the Executive branch or of the General Court for a period of 2 years prior to his appointment, and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment” and inserting in place thereof the following words:— Barnstable, Dukes or Nantucket county and 1 shall reside in either Bristol or Norfolk county.”;

In said Section 20, in said section 2 of said proposed chapter 81B, by striking out the second paragraph and inserting in place

thereof the following paragraph:—

“No director shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, no director shall have been a member or employee of the general court or an employee of the executive branch for a period of 2 years prior to his appointment, and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment.”

By striking out, in Section 20, in the fifth paragraph of section 2 of proposed chapter 81B of the General Laws, by striking out the words “Section 3 of chapter 12 shall not apply” and inserting in place thereof the following words:— “Section 3 of chapter 12 shall apply”;

By striking out, in said Section 20, in the second sentence of section 10 of said proposed chapter 81B, by striking out the words “and provided further, that the agency may not charge and collect” and inserting in place thereof the following words:— “and provided further, that the authority may not charge and collect”;

By in Section 49A, by striking out the word “may” and inserting in place thereof the following words:— “is hereby approved to”;

In Section 62, by striking out the words, in line 5683, “subject to appropriation, the” and inserting in place thereof the following word: — The;

By inserting after Section 62 the following section:—

“SECTION 62A. (a) Upon transfer of assets within the custody and control the department of highways to the division of roads and bridges of the Massachusetts Surface Transportation Authority, established by chapter 81B of the General Laws, the employees in the department of highways shall be transferred to the division of roads and bridges.

(b) The employees of the department of highways, including those who, immediately before the effective date of this act: hold permanent appointment in positions classified under chapter 31 of the General Laws have tenure in their positions as provided in section 9A of chapter 30 of the General Laws; do not hold such tenure; or hold confidential positions, are hereby transferred to the division of roads and bridges, without interruption of service within the meaning of said section 9A of said chapter 30, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization and without loss of accrued rights to holidays, sick leave, vacation and further benefits, and without change in union representation or certified collective bargaining unit as certified by the state labor relations commission or change in local union representation or affiliation. Any collective bargaining agreement in effect immediately before July 1, 2009 shall continue in effect and the terms and conditions of employment therein shall continue as if the employees, to whom such agreement applies, had not been so transferred. The transfer shall not impair the civil service status of reassigned employees who, immediately before the effective date of this act, either hold a permanent appointment in a position classified under said chapter 31 or have tenure in a position by reason of said section 9A said chapter 30. Notwithstanding any general or special law to the contrary, such employees shall continue to retain their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E. This section shall not confer upon any employee any right not held immediately before July 1, 2009 or prohibit any reduction of salary or grade transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before said date.

(c) All petitions, requests, investigations and other proceedings appropriately and duly brought or duly begun and pending before the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the division of roads and bridges.

(d) All orders, rules and regulations duly made and all approvals duly granted by the department of highways, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded or canceled, in accordance with law, by the division of roads and bridges.

(e) All books, papers, records, documents, equipment, buildings, facilities, cash and other property, both personal and real, including all such property held in trust, which immediately before the effective date of this act are in the custody of the department of highways shall be transferred to division of roads and bridges. All questions regarding the identification of such property and of the agencies to which custody thereof is transferred shall be determined by the secretary of transportation.

(f) All duly existing contracts, leases and obligations of the department of highways as they relate to property transferred to the division of roads and bridges pursuant to this section shall continue in effect but shall be assumed by the division of roads and bridges. No existing right or remedy of any character shall be lost, impaired or affected by this section.

This section shall be effective on July 1, 2009”;

By inserting after Section 77L the following 2 sections:

“SECTION 77M. On June 30, 2009, the state comptroller shall transfer the balance of the Central Artery and Statewide Road and Bridge Infrastructure Fund, established in section 63 of chapter 10 of the General Laws, and the Infrastructure Fund, established in section 20 of chapter 29 of the General Laws, which funds are repealed by sections 9 and 14, respectively, to the Surface Transportation Trust Fund, established pursuant to section 35LL of chapter 10 of the General Laws and inserted by section 8, to be used for transportation-related purposes; provided, however, that if either such repealed fund has a negative balance as of June 30, 2009, the comptroller shall first transfer positive balances from funds that contribute to consolidated net surplus, as defined in section 1 of chapter 29 of the General Laws, to eliminate such negative balance in such repealed fund.

SECTION 77N. On June 30, 2011, the state comptroller shall transfer the balance of the MBTA Infrastructure Renovation Fund, established by section 35U of the General Laws and repealed by section 7, to the Surface Transportation Trust Fund, established in section 35LL of chapter 10 of the General Laws and inserted by section 8, to be used for transportation-related purposes.”; and in Section 20, in proposed chapter 81B by striking the following:—

“Section 2. The authority shall be managed by a board of 11 directors, 1 of whom shall be the secretary of transportation who shall serve as chairman of the board and shall not be additionally compensated for such service and 10 of whom shall be appointed by the governor. Of these 10 appointments, 1 shall be the secretary for administration and finance or his designee, who shall not be additionally compensated for such service. None, except for the foregoing appointments, shall be members of the general court or employees of the executive branch or employees of the legislature. One director shall be selected by the governor from a list of 3 candidates proposed by the Massachusetts Association of Regional Transit Authorities; 1 shall be selected by the governor from a list of 3 candidates proposed by the Massachusetts Association of Regional Planning Agencies, who shall represent a metropolitan planning organization; 2 shall be representatives of the service area of the Massachusetts Bay Transportation Authority, or any successor agency thereof, but only 1 of whom shall be from the city of Boston; 1 shall be an expert in the field of construction of transportation projects; 2 shall be experts in the field of public or private finance or accounting; 1 shall be a representative of an environmental organization or environmental public interest group; and 1 shall be an expert in the field of transportation law or organizational change. No more than 6 of the 11 directors shall be members of the same political party. Directors shall reside in different geographic regions of the commonwealth such that at least 1 director shall reside in Berkshire, Franklin, Hampshire or Hampden county, at least 1 director shall reside in Worcester county, one director shall reside in Middlesex or Essex county; provided, however, that the director does not reside in a municipality that is a member of the Metropolitan Area Planning Council, 1 director shall reside in Plymouth, Barnstable, Dukes or Nantucket county, and 1 shall reside in either Bristol or Norfolk county. No director shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment.” and inserting in place thereof:—

“Section 2. The authority shall be managed by a board of 11 directors, 1 of whom shall be the secretary of transportation who shall serve as chairman of the board and 10 of whom shall be appointed by the governor. No director shall be additionally compensated for such service. None, except for the foregoing appointment, shall be members of the general court or employees of the executive branch or employees of the legislature. One director shall be selected by the governor from a list of 3 candidates proposed by the Massachusetts Association of Regional Transit Authorities; 1 shall be representative of the service area of the Massachusetts Bay Transportation Authority, or any successor agency thereof; 1 shall be an expert in the field of construction of transportation projects; 2 shall be experts in the field of public or private finance or accounting; 1 shall be a representative of an environmental organization or environmental public interest group; 1 shall be shall a member of a national or international labor organization; and 1 shall be an expert in the field of transportation law or organizational change. No more than 6 of the 11 directors shall be members of the same political party. Directors shall reside in different geographic regions of the commonwealth such that at least: 1 director shall reside in Berkshire, Franklin, or Hampshire county; 1 director shall reside in Hampden county; 1 director shall reside in Worcester county; 1 director shall reside in Middlesex county; 1 director shall reside in Essex county; 1 director shall reside in Plymouth, Barnstable, Dukes or Nantucket county; and 1 director shall reside within the turnpike corridor between exits 11A east, at the interchange with route 495, and exit 14 at the interchange with Route 128. No director shall have been a registered legislative agent, as defined in section 39 of chapter 3 for a period of at least 5 years prior to his appointment, no director shall have been a member of the General Court or employee of the Executive branch or of the General Court for a period of 2 years prior to his appointment, and no director shall have been employed by an organization that has business before the authority, or any predecessor agency or authority, for a period of at least 2 years prior to his appointment.”

The amendment was adopted.

The Ways and Means amendment, as amended, was then again adopted.

The bill (Senate, No. 2023, amended) was again ordered to a third reading, read a third time and again passed to be engrossed [For text of bill printed as amended, see Senate, No. 2024].

Sent to the House for concurrence.

Report of Committees.

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 James B. Eldridge, Harriette L. Chandler, Carolyn Dykema, Harold P. Naughton, Jr., and other members of the General Court for legislation to establish a special commission on the reuse of Westborough State Hospital.

Senate Rule 36 was suspended, on motion of Mr. Richard T. Moore, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Municipalities and Regional Government.

Sent to the House for concurrence.

Order Adopted.

On motion of Mr. Brown,—

Ordered, That when the Senate adjourns today, it adjourn to meet again on Monday next at eleven o'clock A.M.

Moment of Silence.

At the request of Ms. Murray, the Chair (Mr. Rosenberg), members, guests and employees stood in a moment of silence and reflection to the memory of W. Jay Kingwill.

Adjournment in Memory of W. Jay Kingwill.

The Senator from Plymouth and Barnstable, Ms. Murray, requested that when the Senate adjourns today, it adjourn in memory of Falmouth resident W. Jay Kingwill who passed away Sunday, March 22, 2009 from complications of a chronic condition. Born in Martha's Vineyard, Mr. Kingwill was a Cape Codder his entire life. Growing up, even when his father's work as a Navy chaplain took the family away, he would come back to spend summers with his grandparents in Woods Hole. After studying Russian and theater at Yale University, Mr. Kingwill kept the bright lights of Broadway ablaze working in the theater for more than 40 years. During his tenure on Broadway, he was the general manager for more than 30 productions including "Hello Dolly" and "Sugar Babies". It was during his time in New York that he also met his wife Susan. In 2002, Jay and his wife Susan moved back to Woods Hole. Although retired from the theater, Mr. Kingwill was very active in the Falmouth community and in Democratic politics. He served as a town meeting member and Chairman of the Falmouth Commission on Disabilities. He was also a member of Falmouth Affirmative Action, Falmouth No Place for Hate, Falmouth Democratic Town Committee, and the Democratic National Committee. Mr. Kingwill is survived by his wife Susan, his son Scott Kingwill of Kansas City; three stepchildren Racine M. Romaguera of New Jersey, Pallas Romaguera of New Orleans, Louisiana, and Kiko Romaguera of Stone Ridge, New York; his younger brother David Kingwill of Sebastopol, California; and, his sister Anne More Morin of Bristol, Connecticut; and three grandchildren. Our hearts and prayers are with the family of W. Jay Kingwill. Accordingly, as a mark of respect to the memory of W. Jay Kingwill, at seven minutes past eleven o'clock A.M., on motion of Mr. Richard T. Moore, the Senate adjourned to meet again Monday next at eleven o'clock A.M.