

JOURNAL OF THE HOUSE.

Thursday, August 23, 2001.

Met at fourteen minutes after eleven o'clock A.M., in the House Chamber, in an Informal Session.

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

God, Our Creator, during this moment of reflection and the offering of our daily prayer, we recognize Your presence in our midst and our need for Your assistance in addressing our daily responsibilities. Your spiritual gift of wisdom helps us to make mature, thoughtful and rational decisions in both personal and legislative matters. We are grateful for the material and spiritual blessings which this land offers to us. May we be energized by Your help, and enthusiastic in mind and will to take up the exciting challenges which this information age presents to us. Grant us the good sense, the civility and the charity to accept sound, but reject, faulty legislative and public policy suggestions.

Bestow Your blessings on the Speaker, the members and employees of this House and their families. Amen.

At the request of the Speaker, the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Messages from the Acting Governor.

A message from Her Honor the Lieutenant-Governor, Acting Governor, recommending legislation relative to establishing a parental leave benefit program (House, No. 4491) was filed in the office of the Clerk on Tuesday, August 21.

The message was read; and it was referred, under Rule 30, with the accompanying draft of a bill, to the committee on Commerce and Labor. Sent to the Senate for concurrence.

A message from Her Honor the Lieutenant-Governor, Acting Governor (under the provisions of Section 8 of Article LXXXIX of the Amendments to the Constitution) recommending legislation relative to validating the action taken at the March 24, 2001 annual town election held in the town of Duxbury (House, No. 4492) was filed this day in the office of the Clerk.

The message was read; and it was referred, on motion of Mr. Marini of Hanson, with the accompanying draft of a bill, to the committee on Rules.

Subsequently Mr. Scaccia of Boston, for said committee, reported on the foregoing message, a Bill validating the action taken at the March 24, 2001 annual town election held in the town of Duxbury (printed in House, No. 4492), which was read.

Under suspension of the rules, on motions of Mr. Peterson of Grafton, the bill was read a second and (having been reported by the committee on Bills in the Third Reading to be correctly

drawn) a third time forthwith; and it was passed to be engrossed, its title having been changed by said committee to read: "An Act validating the action taken at the annual town election held in the town of Duxbury.". Sent to the Senate for concurrence.

Resolutions.

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

Resolutions (filed by Ms. Polito of Shrewsbury) honoring the Corridor Nine Area Chamber of Commerce for its community service;

Resolutions (filed by Mr. Swan of Springfield) honoring Taj Mahal for his many accomplishments; and

Resolutions (filed by Mr. Vallee of Franklin) congratulating Ernest and Amanda Zani on the occasion of their fiftieth wedding anniversary;

Mr. DiMasi of Boston, 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. Cresta of Wakefield, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Petitions.

Petitions severally were presented and referred as follows:

By Mrs. Cleven of Chelmsford, petition (subject to Joint Rule 12) of Carol C. Cleven relative to the tuition costs for certain persons residing both in the city of Lowell and the town of Chelmsford.

By Mr. Goguen of Fitchburg, petition (subject to Joint Rule 12) of Emile J. Goguen and Robert A. Antonioni for legislation to authorize the Department of Correction to establish a sick leave bank for Mary O'Neil, an employee of said department.

By Mrs. Gomes of Harwich, petition (subject to Joint Rule 12) of Shirley Gomes and Robert A. O'Leary relative to exempting the purchase of certain leased vehicles from the sales tax.

By the same member, petition (subject to Joint Rule 12) of Shirley Gomes and Robert A. O'Leary relative to providing an income tax deduction for persons not itemizing deductions on a federal income tax return.

By Mr. Hill of Ipswich, petition (subject to Joint Rule 12) of Bradford Hill relative to providing life insurance assistance within the Division of Insurance.

By the same member, petition (subject to Joint Rule 12) of Bradford Hill and another for legislation to designate the clouser minnow as the fly fishing fly of the Commonwealth.

By Mr. Miceli of Wilmington, petition (subject to Joint Rule 12) of James R. Miceli, Charles A. Murphy and Bruce E. Tarr (by vote of the town) relative to authorizing Kelly L. Reynolds to take the next civil service examination for police officer in the town of Wilmington, notwithstanding the maximum age requirements.

Severally, under Rule 24, to the committee on Rules.

Reports of Committees.

By Mr. Scaccia of Boston, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the petition of Paul Kujawski relative to reprecincting. Under suspension of the rules, on motion of Mr. Frost of Auburn, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Election Laws. Sent to the Senate for concurrence.

By Mr. Kujawski of Webster, for the committee on Steering, Policy and Scheduling, asking to be discharged from further consideration

Of the Bill relative to the prevention of cruelty to children and animals (House, No. 1437);

Of the Bill providing for the equitable apportionment of certain liens (House, No. 1818);

Of the Bill to prohibit the use of certain liability waivers as against public policy (House, No. 1819);

Of the Bill relative to parking fines (House, No. 2566);

Of the Bill relative to the warrant management system (House, No. 2731);

Of the Bill to further amend Chapter 123 and change the four-day hearing requirement for certain petitions (House, No. 3359);

Of the Bill relative to prohibiting court ordered visitation rights to certain persons (House, No. 3565);

Of the Bill relative to the availability of certain criminal records to law enforcement agencies (House, No. 3566);

Of the Bill clarifying the definition of lodging and rooming houses (House, No. 3934);

Of the Bill relative to resource recovery facilities (House, No. 3966);

Of the Bill authorizing the city of Newton to seek the imposition of civil fines for violations of the zoning act (House, No. 4293); and

Of the Bill relative to the descent and distribution of property (House, No. 4412);

And recommending that the same severally be referred to the House committee on Rules.

Under Rule 42, the reports severally were considered forthwith; and they were accepted.

Mr. Rogers of Norwood, for the committee on Ways and Means, on House No. 4196, reported, in part, a Bill making appropriations for the fiscal year 2001 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 4490) [Direct Appropriations: \$221,913,901.00; Fund Transfer: \$150,000,000.00; Fund Transfer: \$122,730,920.00; Total Appropriations: \$494,644,821.00]. Read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kujawski of Webster, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of the rules, on motion of Mr. Rogers of Norwood, the bill was read a second time forthwith.

Pending the question on ordering the bill to a third reading, Mr. Lepper of Attleboro moved that it be amended in section 2A by striking out item 4000-1008; and in said section, in item 4000-1009, by striking out the figures: "27,000,000" and inserting in place thereof the figures: "42,000,000". The amendments were rejected.

Mr. Rogers of Norwood then moved that the bill be amended in section 2A by striking out item 0332-3801; in section 2E by inserting before the heading "DISTRICT ATTORNEYS." the following item:

JUDICIARY.

Trial Court.

0332-3801 For the costs associated with a five-year lease for dignified space, including furniture and equipment for the eastern district court of Hampshire at Ware (Hadley session) until a new courthouse is built; provided, that said space shall include, but not be limited to, office space for the clerk and probation staff, bar advocates, and victim witness

and safe passage advocates 2,500,000";

in section 2A by inserting after item 1599-0107 the following item:

"1599-3437 For a reserve to meet the cost of fiscal years 2001 and 2002 salary adjustments necessary to provide equal salary adjustments to non-unit and administrative personnel would otherwise be covered by collective bargaining agreements at the community colleges; provided, that the secretary of administration and finance may transfer from the sum appropriated herein to other items of appropriations and allocations thereof for the fiscal years 2001 and 2002 and such amounts as are necessary to meet the cost of said adjustments where the amounts otherwise available are insufficient for that purpose, in accordance with a transfer plan which shall be filed with the house and senate committees on ways and means 3,600,000";

by inserting after item 1599-7052 the following item:

“1599-8420 For the regional tourism facilities fund pursuant to the provisions of subsection (e) of section 35J of chapter 10 of the general laws and subsection (b) of section 42 of chapter 23G of the general laws 744,294

Massachusetts Tourism Fund 100%”;

in item 4000-1008, in lines 0 and 0, by striking out the following: “which have less than 30 days of cash to support all operating requirements and which have” and inserting in place thereof the following: “which, as of June 30, 2001, had less than 30 days of cash to support all operating requirements and which had”;

and by inserting after item 4000-1009 the following item:

“4000-1012 For non-recurring payments to financially distressed non-profit health care providers, including nursing facilities and home health care providers; provided, that the division shall collaborate with the division of health care finance and policy and the department of public health to determine the methodology by which to make said payments; provided further, that the division shall make said payments in a manner designed to maximize federal financial participation and to achieve the greatest possible gains in patient care and public health; provided further, that the methodology for making said payments shall take into account such factors as negative operating margins, insufficient cash flow and the likelihood of closure or loss of critical community services in identifying financially distressed providers; provided however, that the division shall give priority in the distribution of funds from this item to those providers which had insufficient cash available as of June 30, 2001 to remain in business throughout state fiscal year 2002; provided further, that in order to receive said payments, a provider must comply with the following provisions: (a) submit a business plan that details strategic steps to be taken over a three-year period to enhance the long-term financial viability of the provider; (b) quantify specific performance measures and provide the division with quarterly reports on said measures; (c) submit quarterly financial statements to the division; and (d) document and submit fundraising initiatives and strategies to complement any non-recurring payment received pursuant to this item; provided further, that said payments shall be completely payable within state fiscal year 2002; and provided further, that the division shall file a report not later than September 1, 2001 with the house and senate committees on ways and means detailing: (a) the methodology used to determine the payments; (b) the amount projected to be paid to each such provider in state fiscal year 2002; and (c) the projected impact of the payments on the patient

care systems supported by each provider 5,000,000”;

in section 2C.I. by inserting after item 1599-3384 the following items:

“1599-3437 3,600,000

1599-8420 1,744,294”,

4000-1012 5,000,000”;

and by striking out item 0332-3801;

in section 44, in line 0, by striking out the figures: “\$122,730,920” and inserting in place thereof the figures: “\$125,230,920”; and by inserting after section 46 the following section:

“SECTION 46A. Section 29 of chapter 23G of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following two sentences:— The agency may provide by resolution for the issuance from time to time of debt obligations of the agency for any of its corporate purposes. In addition, the agency may provide by resolution for the issuance from time to time of debt obligations of the agency for any purpose for which monies in the regional tourism fund established under subsection (b) of section 42 may be applied, which debt obligations may be payable from and secured by (i) monies credited to said fund and appropriated from said fund for the purpose of paying such debt obligations and (ii) such reserves and other security as the agency may determine to be necessary or desirable, including without limitation, any funds credited to said fund.”.

The amendments were adopted; and the bill, as amended, was ordered to a third reading.

Under suspension of the rules, on motion of Mr. Jones of North Reading, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time forthwith; and it was passed to be engrossed. The bill (House, No. 4490, printed as amended) then was sent to the Senate for concurrence.

By Mr. Rogers of Norwood, for the committee on Ways and Means, that the Bill relative to exchange of interests in land located in the town of Hingham and for an improved waterfront park and improved access to water transportation facilities (House, No. 4102) ought to pass with amendments by striking out section 4 and inserting in place thereof the following section:

“SECTION 4. In consideration of the conveyance of the property and interests in property more fully described in sections 1, 2 and 3, the Massachusetts Bay Transportation Authority shall pay to the department of environmental management the full and fair market value of the property and interests in property as established in accordance with section 26. The proceeds of the conveyance shall be deposited in the conservation trust account of the department of environmental management established under section 1 of chapter 132A of the General Laws, and shall be expended without further appropriation for the planning, design, permitting, construction or acquisition by other means of new facilities or improvements to existing facilities which shall include, but not be limited to, offices, maintenance garages, visitor services and orientation space, waterfront park, procurement of office and maintenance facilities under long term lease, within or in proximity to remaining department of environmental management property at Hewitts Cove and Boston Harbor Islands State Park. Certain ferry and passenger terminal, pier and docking facility improvements and construction shall be in accordance with the terms of an existing agreement between the Massachusetts bay transportation authority and the department of environmental management, dated January 1, 1991. All such ferry, passenger terminal, pier and docking facility improvements and

construction shall be as determined by the commissioner of the division of capital asset management and maintenance in consultation with the commissioner of the department of environmental management and the executive office of transportation and construction.”; and by inserting after section 28 the following section:

“SECTION 28A. The department of environmental management shall develop a plan for expenditure of the proceeds credited to the conservation trust account of said department pursuant to section 4 of this act and shall file said plan with the house and senate committees on ways and means, the joint committee on state administration and the joint committee on natural resources and agriculture at least thirty days prior to the commencement of said plan by the department.”. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling, with the amendments pending.

Mr. Kujawski of Webster, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Rogers of Norwood, the bill was read a second time forthwith.

The amendments previously recommended by the committee on Ways and Means then were adopted; and the bill (House, No. 4102, amended) was ordered to a third reading.

By Mr. Kujawski of Webster, for the committee on Steering, Policy and Scheduling, that the House Bill relative to the definition and labeling of certain food products and dietary supplements (House, No. 4353) be scheduled for consideration by the House.

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

By Ms. Stanley of West Newbury, for the committee on Health Care, on Senate, No. 377 and House, Nos. 1015, 1191, 3298, 3299 and 3538, an Order relative to authorizing the committee on Health Care to make an investigation and study of certain Senate and House documents concerning oral health procedures and services (House, No. 4481).

By the same member, for the same committee, on Senate, No. 477 and House, Nos. 610, 814, 2908, 3537, 3718, 3721 and 3870, an Order relative to authorizing the committee on Health Care to make an investigation and study of certain Senate and House documents concerning human experimentation, patients’ rights, medical reports and other related matters (House, No. 4482).

By the same member, for the same committee, on Senate, No. 488 and House, Nos. 444, 447, 1381, 1383, 1384, 1948, 2522, 3100 and 3309, an Order relative to authorizing the committee on Health Care to make an investigation and study of certain Senate and House documents concerning the labeling and distribution of prescription drugs (House, No. 4483).

By the same member, for the same committee, on Senate, No. 494 and House, No. 1387, an

Order relative to authorizing the committee on Health Care to make an investigation and study of certain Senate and House documents concerning quality of care and other related matters (House, No. 4484).

By the same member, for the same committee, on Senate, No. 503 and House, Nos. 812 and 2309, an Order relative to authorizing the committee on Health Care to make an investigation and study of certain Senate and House documents concerning distribution of non-narcotic drugs (House, No. 4485).

By the same member, for the same committee, on Senate, No. 574 and House, Nos. 1008, 2694 and 3305, an Order relative to authorizing the committee on Health Care to make an investigation and study of certain Senate and House documents concerning medical peer reviews and patient referrals and other related matters (House, No. 4486).

By the same member, for the same committee, on House, Nos. 1394 and 1760, an Order relative to authorizing the committee on Health Care to make an investigation and study of certain House documents concerning the supply of flu vaccines and the immunization of college students (House, No. 4487).

Severally referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

Subsequently Mr. Scaccia of Boston, for said committees, reported, in each instance, asking to be discharged from further consideration of the orders; and recommending that the same severally be referred to the House committee on Rules.

Under Rule 42, the reports severally were considered forthwith; and they were accepted.

By Ms. Stanley of West Newbury, for the committee on Health Care, on a petition, a Bill relative to needlestick injury prevention in public health facilities and settings (House, No. 1184, changed in section 1, in line 4, by striking out the word “hallow-bore” and inserting in place thereof the word “hollow-bore”; and in section 2, in line 14, by striking out the word “or” and inserting in place thereof the word “and”).

By the same member, for the same committee, on a petition, a Bill prioritizing risks to public health (House, No. 1190, changed in section 2, in line 33, by striking out the date: “January 1, 2002” and inserting in place thereof the date: “November 1, 2002”; and in line 34, by inserting after the word “basis” the following: “, beginning on January 1, 2004”).

By Mr. Koutoujian of Newton, for the same committee, on House, No. 1382, a Bill relative to standardized prescription drug information cards (House, No. 4488).

By Mr. Mariano of Quincy, for the committee on Insurance, on Senate, No. 764 and House, No. 2354, a Bill providing for the notification of defective claims and claims payment policies (House, No. 2354).

By Mr. Koczera of New Bedford, for the committee on Natural Resources and Agriculture, on a petition, a Bill to provide for the recycling of lead-acid motor vehicle and marine batteries

(House, No. 1254, changed in section 3, in line 8 and also in line 16, by striking out the word “or”; in line 10, after the word “Agency”, and in line 16, after the word “smelter” by inserting, in each instance, the words “, or to another appropriate and authorized receiver as technology develops”).

By Mr. Casey of Winchester, for the committee on Taxation, on a petition, a Bill relative to the Massachusetts uniform sales and use tax administration act (House, No. 1523).

Severally read; and referred, under Rule 33B, to the committee on Science and Technology.

By Mr. Toomey of Cambridge, for the committee on Public Safety, on a petition, a Bill relative to toll enforcement on the Tobin Memorial Bridge (House, No. 4176).

By Mr. Hall of Westford, for the committee on State Administration, on a petition, a Bill relative to direct payments (House, No. 2421).

By the same member, for the same committee, on a petition, a Bill relative to subcontractors and bonding requirements on public construction contracts (House, No. 2422).

By the same member, for the same committee, on a petition, a Bill to improve competition in the furnishing of materials for use in certain public contracts (House, No. 2431).

By the same member, for the same committee, on House, No. 2620, a Bill providing for greater accountability on public works projects (House, No. 4489).

By Mr. Casey of Winchester, for the committee on Taxation, on House, Nos. 189 and 204, a Bill relative to the taxation of the property of telecommunications companies (House, No. 204).

By the same member, for the same committee, on House, Nos. 1319 and 3217, a Bill relative to amending the estimated tax payment requirement (House, No. 1319).

By the same member, for the same committee, on a petition, a Bill clarifying the tax treatment of prepaid calling arrangements (House, No. 1320).

By the same member, for the same committee, on a petition, a Bill relative to a study of the investment tax credit (House, No. 1324).

By Mr. Sullivan of Braintree, for the committee on Transportation, on a petition, a Bill requiring the posting of certain street signs (House, No. 2277, changed by striking out section 2).

By the same member, for the same committee, on a petition, a Bill requiring certain safety devices in the controlling compartment of all railroad locomotives operated within the Commonwealth (House, No. 2638).

By the same member, for the same committee, on a petition, a Bill relative to the heating and ventilation of railroad cabs and for the provision of certain facilities at crew reporting stations

(House, No. 2639).

Severally read; and referred, under Rule 33, to the committee on Ways and Means.

At one minute before twelve o'clock noon, the Speaker declared a recess subject to the call of the Chair; and at the hour of three o'clock P.M., the House was called to order with the Speaker in the Chair.

Mr. Rogers of Norwood, for the committee on Ways and Means, on House, No. 4480, reported, in part, a Bill making certain appropriations for the fiscal year ending June 30, 2002, before final action on the General Appropriation Bill for that fiscal year (House, No. 4495) [Direct Appropriations: \$1,068,000.000.00], which was read.

Under suspension of the rules, on motions of Mr. Rogers of Norwood, the bill was read a second and a third time forthwith.

Pending the question on passing the bill to be engrossed, Mr. Jones of North Reading moved that it be amended 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 forthwith make certain appropriations for the fiscal year ending June 30, 2002, before final action on the General Appropriation Bill for that fiscal year, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”.

The amendment was adopted; and the bill, House, No. 4495, amended) was passed to be engrossed. Sent to the Senate for concurrence.

Recess.

At twelve minutes after three o'clock P.M., the Speaker declared a recess subject to the call of the Chair; and at seven minutes after six o'clock P.M. the House was called to order with Mr. Larkin of Pittsfield in the Chair.

Paper from the Senate.

The House Bill making certain appropriations for the fiscal year ending June 30, 2002, before final action on the General Appropriation Bill for that fiscal year (House, No. 4495, amended) came from the Senate passed to be engrossed, in concurrence, with certain amendments, striking out all after the enacting clause and inserting in place thereof the following:

“SECTION 1. Notwithstanding any general or special law to the contrary, the amount of \$1,093,000,000 is hereby appropriated for the fiscal year ending June 30, 2002, to meet necessary expenditures before the enactment of the general appropriation act for that fiscal year, for the maintenance and operations of the several departments, boards, commissions and institutions, including federal grant and Intragovernmental Service Fund expenditures, for other necessary services and for meeting certain requirements of law, including \$23,000,000 for the clean elections program. Said amount of \$1,093,000,000 shall be in addition to the amount made available for the purposes in section 1 of chapter 23, section 1 of chapter 40, section 1 of

chapter 47 and section 1 of chapter 61 of the acts of 2001. The authorization contained in this section shall cease to be operative as of the effective date of that general appropriation act, and all actions taken under this section shall apply against that general appropriation act. All expenditures made under this authorization shall be consistent with appropriations made in that general appropriation act.

SECTION 2. This act shall take effect upon its passage.”; and striking out the emergency preamble (inserted by amendment by the House).

Under suspension of Rule 35, on motion of Mr. Rogers of Norwood, the amendments were considered forthwith.

At the request of the same member, the amendments were divided.

The House then concurred with the Senate in its amendment, striking out the emergency preamble.

On further motion of Mr. Rogers of Norwood, the House concurred with the Senate in its amendment striking out all after the enacting clause and inserting in place thereof a new text with a further amendment, striking out all after the enacting clause and inserting in place thereof the following:

“SECTION 1. Notwithstanding any general or special law to the contrary, the amount of \$1,070,000,000 is hereby appropriated for the fiscal year ending June 30, 2002, to meet necessary expenditures before enactment into law of the general appropriation act for that fiscal year, for the maintenance and operations of the several departments, boards, commissions and institutions, including federal grant and Intragovernmental Service Fund expenditures, for other necessary services and for meeting certain requirements of law. This amount shall be in addition to the amount made available for the purposes in section 1 of chapter 23, section 1 of chapter 40, section 1 of chapter 47 and section 1 of chapter 61 of the acts of 2001. The authorization contained in this section shall cease to be operative as of the effective date of that general appropriation act. All expenditures made under this authorization shall be consistent with appropriations made in that general appropriation act.

SECTION 2. This act shall take effect upon its passage.”.

Sent to the Senate for concurrence in the further amendment.

Recess.

At twelve minutes after six o'clock P.M., the Chair (Mr. Larkin of Pittsfield), declared a recess subject to the call of the Chair; and at nine minutes before seven o'clock P.M. the House was called to order with Mr. Larkin in the Chair.

Order.

On motion of Mr. Finneran of Boston,—

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

At eight minutes before seven o'clock P.M., on motion of Mr. Rogers of Norwood (Mr. Larkin of Pittsfield being in the Chair), the House adjourned, to meet tomorrow at ten o'clock A.M., in an Informal Session.