

JOURNAL OF THE HOUSE.
Wednesday, October 22, 2003.

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

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

Gracious God, we pause for this moment of prayerful refection to seek guidance as we take up and evaluate the items on today's legislative calendar. Your help enables us to obtain accurate knowledge of current legislative and people issues, a clear (if possible) vision of future societal needs and the courage to make wise and moral choices even in difficult circumstances. In dealing with controversial and emotional challenges and a variety of interests, inspire us to select our best available options. As we get involved in our daily routine, teach us to take a minute, on occasion, to appreciate the heart and mystery of the universe in which we live and the goodwill, good intentions and good times of people whom we meet daily. Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

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

Appointments to Educational Funding Working Group.

The Speaker announced the appointment of Representatives Larkin of Pittsfield, St. Fleur of Boston and Rogers of Norwood to the House and Senate working group established (under the provisions of Section 607 of Chapter 26 of the Acts of 2003) to develop legislation to reform Chapter 70 of the General Laws.

Statement Concerning Representative Bosley of North Adams.

A statement of Mr. DiMasi of Boston concerning Mr. Bosley of North Adams 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 Bosley of North Adams, will not be present in the House Chamber for today's sitting due to being outside of the Commonwealth on official business. Any roll calls that he may miss today is due entirely to the reason stated.

Statement of Representative Candaras of Wilbraham.

A statement of Ms. Candaras of Wilbraham 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 will not be present in the House Chamber for the remainder of today's sitting due to official business in my district. Any roll calls that I may miss today will be due entirely to the reason stated.

Statement Concerning Representative Sánchez of Boston.

A statement of Mr. DiMasi of Boston concerning Mr. Sánchez 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 Sánchez of Boston, will not be present in the House Chamber for today's sitting due to being away on his honeymoon. Any roll calls that he may miss today is due entirely to the reason stated.

Guests of the House.

During the session, the Chair (Mr. DiMasi of Boston) declared a brief recess; and introduced Colonel Sheila M. Edwards, Colonel Joseph W. Mercuri and Colonel Steven Valente, recent inductees into the National Guard Hall of Fame. They were the guests of Representative Connolly of Everett.

Resolutions.

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

Resolutions (filed by Mrs. Paulsen of Belmont) congratulating Timothy G. Haroutunian on receiving the Eagle Award of the Boy Scouts of America; and

Resolutions (filed by Representatives Torrisi of North Andover and L'Italien of Andover) on the occasion of the retirement of Deputy Fire Chief Edward J. Morgan;

Mr. Scaccia 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. Kafka of Sharon, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Petition.

Mr. Galvin of Canton presented a petition (subject to Joint Rule 12) of William C. Galvin relative to the reporting of fees and the disposition of excess fees collected by constables; and the same was referred, 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 David L. Flynn, Marc R. Pacheco and others that the Armory Commission be authorized to grant a permanent easement to the Knights of Columbus in the town of Bridgewater. Under suspension of the rules, on motion of Mr. Flynn of Bridgewater, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on State Administration. Sent to the Senate for concurrence.

By Ms. St. Fleur of Boston, for the committee on Education, Arts and Humanities, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 4168) of

Martin J. Walsh relative to the Neighborhood House Charter School in the city of Boston,— and recommending that the same be referred to the committee on State Administration. Under Rule 42, the report was considered forthwith; and it was accepted. Sent to the Senate for concurrence.

By Mr. Greene of Billerica, for the committee on Natural Resources and Agriculture, on Senate, Nos. 1202 and 1211 and House, Nos. 588, 1158 and 1160, an Order relative to authorizing the committee on Natural Resources and Agriculture to make an investigation and study of certain Senate and House documents concerning conservation of inland fisheries and wildlife (House, No. 4252). 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 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. Rodrigues of Westport, for the committee on Commerce and Labor, on a petition, a Bill relative to restoring the state film office (House, No. 303).

By the same member, for the same committee, on a petition, a Bill providing for the reduction of junk mail (House, No. 3481).

By Mrs. Owens-Hicks of Boston, for the committee on Local Affairs and Regional Government, on a petition, a Bill authorizing the Department of Veteran's Services to pay a certain sum of money to the town of West Springfield (House, No. 3994) [Local Approval Received].

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

By Mr. Walsh of Boston, for the committee on Homeland Security and Federal Affairs, that the Bill relative to requiring pilots for certain vessels (House, No. 4104) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

By Mr. Rodrigues of Westport, for the committee on Commerce and Labor, on a petition, a Bill further regulating the opening of retail stores on Sundays (House, No. 296).

By the same member, for the same committee, on a petition, a Bill relative to farmstand labor (House, No. 496).

By the same member, for the same committee, on a petition, a Bill concerning fair motor vehicle rentals (House, No. 2566).

By the same member, for the same committee, on a petition, a Bill relative to a limited liability company (House, No. 3925).

By Mrs. Owens-Hicks of Boston, for the committee on Local Affairs and Regional Government, on a petition, a Bill authorizing the town of Raynham to establish an account to be known as the betterment reserve fund (House, No. 4075) [Local Approval Received].

By the same member, for the same committee, on a petition, a Bill relative the certain health premiums payments made by the town of Mashpee (House, No. 4085) [Local Approval Received].

By the same member, for the same committee, on a petition, a Bill authorizing the town of Braintree to lease certain property (House, No. 4098) [Local Approval Received].

By the same member, for the same committee, on a petition, a Bill relative to the municipal light board of the town of Marblehead (House, No. 4107, changed in section 1, in line 5, by inserting after the figure: “3” the word “years”, and in line 8, by inserting after the figure: “3” the word “year”) [Local Approval Received].

By the same member, for the same committee, on a petition, a Bill relative to a change in land use in the town of Lakeville (House, No. 4112) [Local Approval Received].

By the same member, for the same committee, on a message from His Excellency the Governor, a Bill validating the proceedings of the annual town meeting in the town of Palmer (printed in House, No. 4141).

By the same member, for the same committee, on a petition, a Bill eliminating the beautification fund of the town of Braintree (House, No. 4149) [Local Approval Received].

By the same member, for the same committee, on a petition, a Bill relative to the construction of an elementary school in the town of Sunderland (House, No. 4152) [Local Approval Received].

By the same member, for the same committee, on a petition, a Bill relative to the old and historic districts commission of the town of Marblehead (House, No. 4153) [Local Approval Received].

By the same member, for the same committee, on a petition, a Bill authorizing the town of Middleton to grant certain easements (House, No. 4196) [Local Approval Received].

By the same member, for the same committee, on House, No. 4173, a Bill relative to the office of town manager in the town of Arlington (House, No. 4253) [Local Approval Received].

By Mr. Koczera of New Bedford, for the committee on Public Service, on a petition, a Bill exempting the position of deputy police chief of Chelmsford from civil service (House, No. 3836) [Local Approval Received].

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

Engrossed Bill.

The engrossed Bill authorizing the town of Milford to grant an additional license for the sale of all alcoholic beverages to be drunk on the premises (see House, No. 3878) (which originated in the House), having been certified by the Clerk to be rightly and truly prepared for final passage, was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Recess.

At a quarter after eleven o'clock A.M., on motion of Ms. Rogeness of Longmeadow, (Mr. Petruccelli of Boston being in the Chair), the House recessed until half past two o'clock P.M.; and at twenty-one minutes before three o'clock the House was called to order with Mr. DiMasi of Boston in the Chair.

Engrossed Bill — Land Taking.

The engrossed Bill authorizing the town of Braintree to transfer a certain parcel of town park land (see House, No. 4129) (which originated in the House), having been certified by the Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution); and on the roll call 154 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 426 in Supplement.]

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Orders of the Day.

The Senate Bill designating a portion of state highway routes 1A and 133 in the towns of Newbury, Rowley, Ipswich and Essex and the cities of Newburyport and Gloucester as a scenic byway (Senate, No. 1898), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time; and it was passed to be engrossed, in concurrence.

The House Bill providing for the annual observance of myositis awareness day (House, No. 3970) (its title having been changed by the committee on Bills in the Third Reading), reported by said committee to be correctly drawn, was read a third time; and it was passed to be engrossed. Sent to the Senate for concurrence.

Senate bills

Authorizing the town of Wareham to grant a conservation restriction to the Wareham land trust (Senate, No. 1171);

Relative to mutual aid agreements (Senate, No. 1342, amended); and

Further regulating certificates of birth resulting in stillbirth (Senate, No. 1953); and

House bills

Relative to recall elections in the town of Bernardston (printed as Senate, No. 2011);

Relative to records open to public inspection (House, No. 626).

To amend campaign finance (House, No. 1268, changed).

Establishing a betterment fund in the town of Spencer (House, No. 1326);

Validating the acts and proceedings at a certain town caucus in the town of Westhampton (House, No. 1712);

Relative to certain roadways of the Metropolitan District Commission (House, No. 2968);

Relative to parking violations in the town of Provincetown (House, No. 3841);

Relative to the extension of municipal sewer and water services to Plum Island (House, No. 4070);

Relative to vacancies in certain offices in the town of Spencer (House, No. 4077);

Relative to parking fines in the town of Chatham (House, No. 4078);

Relative to parking fines in the town of Harwich (House, No. 4079);

Relative to parking violations in the town of Wellfleet (House, No. 4122);

To regulate hours of employment in movie theaters and food stores for persons under age eighteen (House, No. 4158);

Authorizing the town of Southampton to issue an additional license for the sale of all alcoholic beverages not to be drunk on the premises (House, No. 4162); and

Relative to the historic business district of the town of Chatham (House, No. 4197); Severally were read a second time; and they were ordered to a third reading.

House reports

Of the committee on Public Safety, ought NOT to pass, on the petition (accompanied by bill, House, No. 412) of Philip Travis relative to motor vehicle accidents involving public employees; and

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, House, No. 2130) of Karen Spilka, Deborah D. Blumer, Anne M. Paulsen and Bruce E. Tarr relative to increasing the penalties for motor vehicle violations in marked construction zones and construction areas;

Severally were accepted.

The House Bill relative compensation for certain erroneous felony convictions (House, No. 4166) was read a third time.

The committee on Bills in the Third Reading reported asking to be discharged from further consideration of the bill; and the report was accepted.

Pending the question on passing the bill to be engrossed, Mr. Toomey of Cambridge moved that it be amended by substitution of a Bill relative to compensation for certain erroneous felony convictions (House, No. 4255), which was read.

The amendment was adopted; and the substituted bill was passed to be engrossed. Sent to the Senate for concurrence.

The House Bill making certain changes to the tax laws of the Commonwealth (House, No. 4215) was read a second time.

Pending the question on ordering the bill to a third reading, Mr. Casey of Winchester moved that it be amended by substitution of a bill with the same title (House, No. 4254), which was read.

The amendment was adopted; and the substituted bill was ordered to a third reading.

Subsequently, under suspension of the rules, on further motion of the same member, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time; and it was passed to be engrossed. The bill (House, No. 4254) then was sent to the Senate for concurrence.

The House Bill providing for local government workforce reduction through an early retirement incentive program for certain employees (House, No. 3814) was read a second time.

Pending the question on ordering the bill to a third reading, it was recommitted to the committee on Public Service, on motion of Mr. Koczera of New Bedford.

Reports of Committees.

By Mr. Rogers of Norwood, for the committee on Ways and Means, that the Bill to improve public health in the Commonwealth (House, No. 4249) ought to pass. 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 Rule 7A, on motion of Mr. Koutoujian of Waltham, the bill was read a second time forthwith; and it was ordered to a third reading.

Subsequently, under suspension of the rules, on further motion of the same member, the bill (reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time, its title having been changed by said committee to read: "An Act improving public health in the Commonwealth."

After remarks on the question on passing the bill to be engrossed, Mr. Peterson of Grafton moved that further consideration thereof be postponed until Wednesday, October 29.

After debate on the motion to postpone, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 28 members voted in the affirmative and 126 in the negative.

[See Yea and Nay No. 427 in Supplement.]

Therefore the motion to postpone was negatived.

After remarks on the question on passing the bill to be engrossed, Mr. Koutoujian of Waltham and other members of the House moved that the bill be amended in section 1, in line 66, by striking out the following: "60%" and inserting in place thereof the following: "51%"; and the amendment was adopted.

Mr. Koutoujian then moved that the bill be amended in Section 1, in line 124, by inserting after the word "employing" the words "not more than"; and the amendment was adopted.

The same member then moved that the bill be amended in Section 1, in lines 193 to 196, by striking out the following: "Any nursing home, licensed pursuant to section 71 of chapter 111, may apply to the commissioner of the department of public health for designation of part of the facility as a residence" and inserting in place thereof the following: "Any nursing home, licensed pursuant to section 71 of chapter 111 or any state hospital, the Soldiers' Home in Massachusetts, the Soldiers' Home in Holyoke and any substance abuse treatment center under the jurisdiction of the commonwealth, may apply to the commissioner of the department of public health for designation of part of the facility as a residence". The amendment was adopted.

Mr. Koutoujian of Waltham and other members of the House then moved that the bill be amended by striking out section 4 and inserting in place thereof the following section: "SECTION 4. This act shall take effect on July 5, 2004."

The amendment was adopted.

Mr. Peterson of Grafton and other members of the House then moved that the bill be amended by striking all after the enacting clause and inserting in place thereof the following:

"SECTION 1. Chapter 64C of the General Laws, as appearing in the 2002 Official Edition, is hereby repealed.

SECTION 2. Section 31 of chapter 94C of the General Laws, as so appearing, is hereby amended by adding the following:— (c) cigarettes, cigars and smokeless tobacco of any kind.

SECTION 3. Chapter 270 of the General Laws, as so appearing, is hereby amended by striking out section 22 in its entirety and inserting in place thereof the following section:—

Section 22. Whenever used in this section, unless the context otherwise requires, the word 'cigarette' shall also include within its meaning cigars and smokeless tobacco; and the words 'smokeless tobacco' shall mean snuff, snuff flour, and any other tobacco, or tobacco product prepared in such manner as to be suitable for chewing, including, but not limited to cavendish,

plug, twist and fine-cut tobaccos. The word ‘smoking’ shall include within its meaning the use of smokeless tobacco.

No person shall smoke in any place within the commonwealth, public or private, nor shall he sell, distribute, dispense, manufacture, import, or otherwise possess cigarettes.

SECTION 4. Section 23 of Chapter 270 of the General Laws, as so appearing, is hereby repealed.”.

Mr. Koutoujian of Waltham thereupon raised a point of order that the amendment offered by the gentleman from Grafton, et als, was improperly before the House for the reason that it went beyond the scope of the pending bill.

The Chair (Mr. DiMasi of Boston) stated that the point of order was well taken; and the amendment was laid aside accordingly.

Mr. Peterson of Grafton thereupon appealed from the decision of the Chair; and the appeal was seconded by Mr. Jones of North Reading.

The question was then put “Shall the decision of Chair stand as the judgement of the House?”.

After remarks on the appeal from the decision of the Chair, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson; and on the roll call 131 members voted in the affirmative and 23 in the negative.

[\[See Yea and Nay No. 428 in Supplement.\]](#)

Therefore the Decision of the Chair was sustained.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended by adding at the end thereof the following section:

“SECTION 5. Chapter 63 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following section:—

Section 31I. A domestic or foreign corporation or corporate franchise shall be allowed a credit against its excise due under this chapter equal to 100 per cent of the costs incurred during any taxable year beginning on or after January 1, 2002, and ending on or before December 31, 2003, for the purchase and installation of mechanical ventilation systems and related heating and air conditioning systems; walls, doors, glass, and other barriers; air ducts; plumbing, wiring, and gas lines; and any other materials used in the construction of a designated smoking area designed to reduce the presence of smoke in non-smoking areas, including any modifications to existing physical structures, as well as any costs incurred for labor and design in the construction of such designated smoking area, used by the corporation or corporate franchise in the Commonwealth and situated in the Commonwealth during said period of time, pursuant to any board of health regulation, city ordinance, town bylaw, or any other municipal variance or exemption.”.

After debate on the question on adoption of the amendment, Mr. Jones asked for a count of the House to ascertain if a quorum was present.

The Chair (Mr. DiMasi of Boston), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 154 members were recorded as being in attendance.

[\[See Yea and Nay No. 429 in Supplement.\]](#)

Therefore a quorum was present.

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 41 members voted in the affirmative and 112 in the negative.

[See Yea and Nay No. 430 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 1, in line 322 by striking out the following: “f. Odor of tobacco smoke;”; and the amendment was adopted.

Mr. Jones and other members of the House then moved that the bill be amended in section 1, in line 327, by inserting after the word: “paid”, the words “by the person receiving the citation”; and the amendment was adopted.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 1 by inserting after line 328 the following paragraph:

“Each local board of health, each local inspection department or its equivalent, and the alcoholic beverages control commission shall report annually to the commissioner of the department of public health and the clerks of the House and Senate the following: the number of citations issued; the workplaces which have been issued citations and the number of citations issued to each workplace; the amount that each workplace has been fined; and the total amount collected in fines pursuant to section 22 to 22M, inclusive, of chapter 270 of the General Laws.”.

The amendment was adopted.

Mr. Jones and other members of the House then moved that the bill be amended in section 1, in lines 317 and 318, by striking out the paragraph contained therein; and the amendment was adopted.

Mr. Jones of North Reading and other members of the House then moved that the bill be amended in section 1, in line 231, by inserting after the word “health.” the following sentence: “If the department of public health does not renew the certification before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, such certification shall be considered to continue until such time as the department notifies the nursing home of its certification status.”; and in line 265, by inserting after the word “health.” the following sentence: “If the department of public health does not renew the certification before its expiration or provide notice that it has found sufficient cause to not recertify the designated tobacco testing room as such, such certification shall be considered to continue until such time as the department notifies the nursing home of its certification status.”. The amendments were adopted.

Mr. Jones and other members of the House then moved that the bill be amended in section 1, in lines 510 to 513, inclusive, by striking out the two sentences contained therein and inserting in place thereof the following two sentences: “Only 1 waiver, for 90 days, may be issued per workplace. At the end of the 90 days, the waiver may be renewed for an additional 90 days at the discretion of the commissioner.”; and the amendment was adopted.

Mr. Koutoujian of Waltham and other members of the House then moved that the bill be amended in section 1, in lines 44, 45 and 46, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:

“‘Membership Association’, a not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A membership association is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a membership association is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the membership association holds an alcoholic beverage license, said license shall be a ‘club license’ or a ‘war veterans club license’ as defined in M.G.L. Ch. 138, Sec. 12 and by the Massachusetts Alcoholic Beverages Control Commission. Said license is subject to the terms set forth by the local licensing authority.”; and in lines 124 to 136, inclusive, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:

“b. Membership Associations except when the associations are open to the public or operating as an enclosed area as defined in Section 22 and described in Section 22D herein.”.

After debate the amendments were adopted.

Mrs. Gomes of Harwich then moved that the bill be amended in section 1, in lines 23 to 28, inclusive, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:

“‘Employer’, any individual, partnership, association, corporation, trust, school, college, university or other educational institution or other organization, including any public or private authority or municipal or other governmental agency, which regularly uses the services of 5 or fewer employees, in one or more workplaces at any one time.”; and in lines 70 to 75, inclusive, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:

“‘Workplace’, any enclosed indoor area, structure or facility or any portion thereof, at which 5 or fewer employees perform services for compensation for their employers, including, but not limited to: retail establishments; retail stores; restaurants; bars; cafes; bowling alleys; function rooms, halls and other enclosed spaces rented to the public.”.

The amendments were rejected.

Ms. Rogeness of Longmeadow and other members of the House then moved that the bill be amended in section 1, in lines 193 to 231, inclusive, by striking out the ten paragraphs contained therein. After remarks the amendment was rejected.

Mr. Frost of Auburn then moved that the bill be amended in section 1 by inserting after line 158 the following paragraph:

“h. Workplaces in communities that have not established a smoking ban or restriction by way of local by-law or ordinance may have designated smoking sections which are completely enclosed from non-smoking sections by way of full length doors and ventilation systems. Any employee may work in said enclosed section only after signing a waiver to do so, which contains information regarding the health dangers of second-hand smoke. Current employees shall not be mandated to work in said smoking section. Future employees may be mandated to sign as a condition of employment.”.

The amendment was rejected.

The same member then moved that the bill be amended in section 1 by adding at the end thereof the following:

“22N. Companies which sell ownership rights to owners of time share properties shall distinguish between smoking and non-smoking time share properties. Companies must disclose to potential buyers whether the unit they are purchasing is a smoking or non-smoking property and post signs accordingly.”.

The amendment was adopted.

Mr. Kujawski of Webster moved that the Bill be amended in section 1 by inserting after line 54 the following paragraph:

“‘Separate smoking room’ means an enclosed room the exclusive purpose of which is for smoking. No business transactions, including, but not limited to. The sale, including vending machines, and/or service of food, beverages, or any other product, and/ or collection of any payments, shall be conducted in this room.” and by inserting after line 147 th following paragraph:

“Separate smoking room provided such room be clearly designated completely enclosed on all sides by solid floor to ceiling walls, comply with all applicable fire and building code requirements, and have a sprinkler system for fire safety and have a separate ventilation system whereby the air from such enclosed room is immediately exhausted to an outdoor area by an exhaust fan rather than being recirculated inside, and pressurized to prevent back streaming of secondhand smoke into smoke free areas. Such rooms shall not contain the sole means of ingress and egress to restrooms or any other smoke free area. Any door in such room shall be self-closing, and shall remain closed except to the extent necessary to permit square footage or the premises, including non-smoking lounges and shall not exceed three hundred fifty square feet. No employees shall be permitted to enter such room for the purpose of conducting any business transaction, including but not limited to the sale or service of food, beverages, or any other product, provided however, that an employee shall be allowed into such room to provide busing or other cleaning services when no smoking has occurred for fifteen minutes prior to the employee entering the room and no customers are present. Such room shall have a ventilation system in which the ventilation rate is at least sixty cubic feet per minute per occupant based on a maximum occupancy of seven individuals per on hundred feet of floor space, and the negative air pressure is at a rate such that when measured by a device approved by the department of health, the pressure differential is at least three hundredths of an inch of water column. Relative to the air pressure in the adjacent room in which smoking is not permitted. Such ventilation from operable windows, doors, air-conditioning, and any other heating, ventilation and air conditioning intakes.”.

The amendment was rejected.

Mr. Frost of Auburn then moved that the bill be amended by adding at the end thereof the following section:

“SECTION 5. Acceptance of the provisions of this act by any city or town in the commonwealth shall be by an affirmative vote of a majority of the voters at any regular or special town election at which the question of acceptance has been placed on the ballot. This act shall become effective on the date which is 90 days following said affirmative vote.”.

The amendment was rejected.

On the question on passing the bill, as amended, to be engrossed, the sense of the House was taken by yeas and nays, at the request of Mr. Koutoujian of Newton; and on the roll call 127 members voted in the affirmative and 25 in the negative.

[\[See Yea and Nay No. 433 in Supplement.\]](#)

Therefore the bill (House, No. 4256, printed as amended) was passed to be engrossed. Sent to the Senate for concurrence.

Mr. Rogers of Norwood, for the committee on Ways and Means, on a message from His

Excellency the Governor (for message, see House, No. 4127), returning with His disapproval of certain sections contained in the engrossed Bill making appropriations for fiscal year 2003 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4124), reported, in part, in each instance, that certain sections stand (as passed by the General Court).

Under suspension of the rules, in each instance, on motion of Mr. Koutoujian of Waltham, the following sections were considered; and the sense of the House, in each instance, was determined by yeas and nays, as required by Chapter I, Section I, Article II of the Constitution, as follows:

Section 10, which had been vetoed by the Governor, was considered, as follows:

“SECTION 10. Said chapter 26 is hereby further amended by inserting after section 713 the following section:—

Section 713A. Section 175 of this act shall take effect on November 1, 2003.”.

The question on passing said section, notwithstanding the objections of the Governor, was determined by yeas and nays, as required by the Constitution; and on the roll call 129 members voted in the affirmative and 23 in the negative.

[\[See Yea and Nay No. 431 in Supplement.\]](#)

Therefore section 10 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

Section 8, which had been vetoed by the Governor, was considered, as follows:

“SECTION 8. Item 1108-5200 of section 2 of chapter 26 of the acts of 2003 is hereby amended by adding the following words:— ; provided, that notwithstanding the provisions of this item or any general or special law to the contrary, the authority’s share of such premiums for employees of the Massachusetts Bay Transportation Authority, to whom a collective bargaining agreement in force on July 1, 2002, other than because of a rollover, applies, shall be as provided in that agreement until that agreement expires but not including any rollover period.”.

The question on passing said section, notwithstanding the objections of the Governor, was determined by yeas and nays, as required by the Constitution; and on the roll call 132 members voted in the affirmative and 21 in the negative.

[\[See Yea and Nay No. 432 in Supplement.\]](#)

Therefore section 8 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

By Mr. Rogers of Norwood, for the committee on Ways and Means, that the Bill relative to the Inland Fish and Game Fund (House, No. 4248) ought to pass. 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 Rule 7A, on motion of Mr. Greene of Billerica, the bill was read a second time forthwith; and after remarks it was ordered to a third reading.

Under suspension of the rules, on further motion of the same member, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time, its title having been changed by said committee to read: "An Act relative to the Inland Fisheries and Game Fund."

Pending the question on passing the bill to be engrossed, Mr. Rogers of Norwood moved that it be amended by inserting after section 11 (as printed) the following section:

"SECTION 14A. Notwithstanding the provisions of any other general or special law to the contrary, the comptroller shall deposit fiscal relief funds and increased federal Medicaid assistance percentage funds received from the federal government during fiscal years 2004 and 2005 pursuant to the Jobs Growth Reconciliation Act of 2003, so-called, in excess of the amount transferred to the uncompensated care trust fund by section 618 of chapter 26 of the Acts of 2003, to the Federal Medicaid Assistance Percentage Escrow Fund. Said fund shall be subject to appropriation, shall not contribute to the calculation of the consolidated net surplus pursuant to section 5C of chapter 29 of the General Laws, and shall expire June 30, 2005 at which time the comptroller shall transfer any remaining fund balance to the Stabilization Fund."

The amendment was adopted.

On the question on passing the bill, as amended, to be engrossed, the sense of the House was taken by yeas and nays, at the request of Mr. Greene; and on the roll call 149 members voted in the affirmative and 0 in the negative.

[\[See Yea and Nay No. 434 in Supplement.\]](#)

Therefore the bill (House, No. 4248, amended) was passed to be engrossed. Sent to the Senate for concurrence.

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

MR. SPEAKER: During the taking of the above yeas and nays, I was absent from the House Chamber due to a scheduling conflict. Had I been present when the vote was taken, I would have voted in the affirmative.

Order.

On motion of Mr. Koutoujian of Waltham,—

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

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at a quarter after seven o'clock P.M., on motion of Mr. Casey of Winchester (Mr. DiMasi of Boston being in the Chair), the House adjourned, to meet tomorrow at eleven o'clock A.M., in an Informal Session.