

Tuesday, April 14, 2009.

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

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

Prayer. Eternal God, we believe that we live each moment of the day in Your presence. You are with us at all times and in all circumstances. In prayer we call You for guidance as we evaluate and address current legislative and administrative matters. As elected leaders, we also look to You for assistance in selecting the right, just and responsible legislative options which are available to us. During these times of stress in financial, employment and political fields, inspire us to plan, reason and work together in our common search for realistic, just and practical answers. Free our hearts and minds of discord, prejudice and anger, but fill them with peace, goodwill and charity. Teach us to continue, in a world of violence, our tradition of respecting the personal dignity, the human life and the human and spiritual rights of all individuals.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

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

Message from the Governor.

Orange.— validate election. A message from His Excellency the Governor (under the provisions of Section 8 of Article LXXXIX of the Amendments to the Constitution) recommending legislation relative to validating a certain election in the town of Orange (House, No. 4058) was filed in the office of the Clerk on Monday, April 13. The message was read; and it was referred, under Rule 30, with the accompanying draft of a bill, to the committee on Election Laws. Sent to the Senate for concurrence.

Statement of Representative Miceli of Wilmington.

A statement of Mr. Miceli of Wilmington was spread upon the records of the House, as follows:

Statement of Representative Miceli of Wilmington. MR. SPEAKER: I would like to call to the attention of the House the fact that I was unable to be present in the House Chamber for a portion of today's sitting because I was attending the funeral of my brother-in-law, Ronald McCoy. My missing of roll calls today is due entirely to the reason stated.

Special Recognitions.

During the Session, the Speaker took the Chair and recognized Matthew P. Landry, a member of the staff of the Office of the Clerk of the House. The Speaker commended Matt on his many accomplishments in bringing better technology to the House of Representatives, and wished him luck during the next few months in his service on active duty in the United States Naval Reserve. Lieutenant (JG) Matthew P. Landry.

Captain Richard Phillips. At the request of Representatives Gifford of Wareham, Turner of Dennis, Peake of Provincetown, Perry of Sandwich, Atsalis of Barnstable, Patrick of Falmouth, Madden of Nantucket and D'Amico of Seekonk, the Speaker then declared a brief recess and acknowledged the recent success of the USS Bainbridge in securing the release of Captain Richard Phillips. Captain Phillips of the U.S.-flagged Maersk Alabama was held for five days by pirates after securing the safety of his crew. Captain Shane Murphy of Seekonk took command of the Maersk Alabama when the pirates seized Captain Phillips.

Eric Peterson. During the session, the Chair (Mr. Vallee of Franklin) declared a brief recess and congratulated Eric Peterson of Grafton upon his acceptance to United States Naval Officer's Candidate School in Newport, Rhode Island. Eric is scheduled to take his oath of office on Thursday, April 16, and will begin his training and education on the following Sunday, April 19, 2009.

Resolutions.

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

Resolutions (filed by Mr. Cabral of New Bedford and other members of the House) honoring Maria Manuela Freitas Bairos, Consul General of Portugal in Boston; and Maria Manuela Freitas Bairos.

Resolutions (filed by Representatives Creedon of Brockton and Canavan of Brockton) congratulating Michael Paul (Calland) Lombardo of Brockton upon his elevation to the rank of Eagle Scout; Michael Paul Lombardo.

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

Reports of Committees.

By Mr. Kafka of Stoughton, for the committee on Steering, Policy and Scheduling, that the Bill establishing a sick leave bank for Cassandra Macklan, an employee of the Department of Health and Human Services (House, No. 3942) be scheduled for consideration by the House. Cassandra Macklan,— sick leave.

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

Geraldine Egan,—
sick leave.

Mr. Petrolati of Ludlow being in the Chair,—
By Mr. Kafka of Stoughton, for the committee on Steering, Policy and Scheduling, that the Bill establishing a sick leave bank for Geraldine Egan, an employee of the Department of Public Health (House, No. 4048) be scheduled for consideration by the House.
Under suspension of Rule 7A, on motion of Mr. Mariano of Quincy, the bill was read a second time forthwith; and it was ordered to a third reading.

Recess.

Recess.

At half past eleven o'clock A.M., on motion of Mrs. Haddad of Somerset (Mr. Petrolati of Ludlow being in the Chair), the House recessed until the hour of twelve o'clock noon; and at that time the House was called to order with Mr. Petrolati in the Chair.

Quorum.

Quorum.

Mr. Pedone of Worcester thereupon asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum,—
yea and nay
No. 62.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 153 members were recorded as being in attendance.

[See Yea and Nay No. 62 in Supplement.]

Therefore a quorum was present.

Report of a Committee.

General Appropriation Bill,—
procedures.

Mr. Binienda of Worcester, for the committee on Rules, reported (under the provisions of House Rules 7B and 7C) an Order relative to special procedures for consideration of the General Appropriation Bill for the fiscal year 2010 (House, No. 4100) (for order, see House, No. 4057).

After remarks on the question on adoption of the order Mr. Jones of North Reading and others moved to amend it by adding the following paragraph:

Ordered. That, no amendment to the General Appropriation Bill for Fiscal Year 2010 relative to earmarking expenditures shall be in order."

Amendment rejected,—
yea and nay
No. 63.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 19 members voted in the affirmative and 136 in the negative.

[See Yea and Nay No. 63 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the order in line 2, after the word "filed", by inserting the word "properly"; and the amendment was adopted.

Mr. Jones and other members then moved to amend the order in line 4, after the word "Speaker", by inserting the words "; provided that such amendments shall contain a one-sentence brief summary of its intent". The amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the order adding the following paragraph:

Ordered. That, no amendment to the General Appropriation Bill for Fiscal Year 2010 attempting to increase an appropriation shall be offered without a corresponding appropriation reduction or revenue increase."

Amendment rejected,—
yea and nay
No. 64.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 20 members voted in the affirmative and 136 in the negative.

[See Yea and Nay No. 64 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the order by striking out the paragraph contained in lines 17 to 20.

Amendment rejected,—
yea and nay
No. 65.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Frost of Auburn; and on the roll call 15 members voted in the affirmative and 142 in the negative.

[See Yea and Nay No. 65 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the order in line 21 by striking out the words "consolidated amendments or", by striking out the paragraph contained in lines 25 to 30, inclusive, and by striking out the paragraph contained in lines 37 to 41, inclusive.

Amendments rejected,—
yea and nay
No. 66.

After debate on the question on adoption of the amendments, the sense of the House was taken by yeas and nays at the request of Mr. Perry of Sandwich; and on the roll call 17 members voted in the affirmative and 142 in the negative.

[See Yea and Nay No. 66 in Supplement.]

Therefore the amendments were rejected.

Mr. Jones of North Reading and other members then moved to amend the order in line 41 by inserting after the word "members" the words "; provided that the consolidated amendment shall contain a fiscal note indicating its total expenditures".

Amendment rejected,—
yea and nay
No. 67.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Jones; and on the roll call 18 members voted in the affirmative and 140 in the negative.

[See Yea and Nay No. 67 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the order in line 13 by striking out the words "enhancing or", and after line 16 by inserting the following paragraph:—

Ordered. That, no amendment to the General Appropriation Bill for Fiscal Year 2010 relative to enhancing revenue, including but not limited to increases in tax revenue or revenue generated from fees, shall be considered in order, and be it further."

Amendments rejected,—
yea and nay
No. 68.

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

Mr. Jones; and on the roll call 17 members voted in the affirmative and 142 in the negative.

[See Ye and Nay No. 68 in Supplement.]

Therefore the amendments were rejected.

On the question on adoption of the order, as amended, the sense of the House was taken by yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 142 members voted in the affirmative and 16 in the negative.

[See Ye and Nay No. 69 in Supplement.]

Therefore the order (House, No. 4057, amended) was adopted.

Quorum.

Mr. Vallee of Franklin being in the Chair,—

Mr. Pedone of Worcester thereupon asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Vallee), 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 149 members were recorded as being in attendance.

[See Ye and Nay No. 70 in Supplement.]

Therefore a quorum was present.

Orders of the Day.

The Senate Bill relative to making certain changes in the retirement system of the Commonwealth (Senate, No. 2026, amended) (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.

After remarks on the question on passing the bill, as amended, to be engrossed, in concurrence, Mr. Jones of North Reading and other members moved to amend it by striking out section 20 (as printed) and inserting in place thereof the following section:

“SECTION 19. Chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 22D the following new section:—

Section 22E. (a) For the purposes of this section, a statutory adjustment to the commonwealth pension liability is one that changes the benefits or contributions of classes of members, including but not limited to early retirement incentive programs, cost-of-living adjustments, the membership of said classes, or any amendments to chapter 32 that may change the actuarial liability of the commonwealth pension system.

(b) Joint committees of the general court and the house and senate committees on ways and means when reporting favorably on legislation referred to them which creates a statutory adjustment to the commonwealth pension liability shall include a review, evaluation and financial impact conducted by the actuary of the public employee retirement administration commission pursuant to this section.

(c) Upon request of a joint standing committee of the general court having jurisdiction or the committee on ways and means of

Order adopted,—
yea and nay
No. 69.

Quorum.

Quorum,—
yea and nay
No. 70.

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either branch, the actuary of the public employee retirement administration commission shall conduct and prepare a review, evaluation and financial impact of the statutory adjustment to the commonwealth pension liability, in consultation with other relevant state agencies, and shall report to the committee within 90 days of the request.”.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Jones; and on the roll call 158 members voted in the affirmative and 0 in the negative.

[See Ye and Nay No. 71 in Supplement.]

Therefore the amendment was adopted.

Mr. Jones of North Reading and other members then moved to amend the bill by inserting after section 6 the following section:

“SECTION 6A. Section 5 of chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting at the end thereof the following subdivision:—

(5) Payments to a member retired under the provisions of this section who is incarcerated for having been convicted of a felony committed on or after the effective date of this paragraph shall cease for the period of such member’s incarceration. Under no circumstances shall such payments be recoverable by such member after such period of incarceration.”; by inserting after section 14 (as published) the following section:

“SECTION 13A. Section 10 of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following subdivision:—

(5) Payments to a member retired under the provisions of this section who is incarcerated for having been convicted of a felony committed on or after the effective date of this paragraph shall cease for the period of such member’s incarceration. Under no circumstances shall such payments be recoverable by such member after such period of incarceration.”; by inserting after section 19 (inserted by amendment by the House) the following four sections:

“SECTION 19A. Section 26 of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following subdivision:—

(6) Payments to a member retired under the provisions of this section who is incarcerated for having been convicted of a felony committed on or after the effective date of this paragraph shall cease for the period of such member’s incarceration. Under no circumstances shall such payments be recoverable by such member after such period of incarceration.

SECTION 19B. Section 28M of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following paragraph:—

Payments to a member retired under the provisions of this section who is incarcerated for having been convicted of a felony committed on or after the effective date of this paragraph shall cease for the period of such member’s incarceration. Under no circumstances shall such payments be recoverable by such member after such period of incarceration.

Amendment adopted,—
yea and nay
No. 71.

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SECTION 19C. Section 28N of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following paragraph:

Payments to a member retired under the provisions of this section who is incarcerated for having been convicted of a felony committed on or after the effective date of this paragraph shall cease for the period of such member's incarceration. Under no circumstances shall such payments be recoverable by such member after such period of incarceration.

SECTION 19D. Chapter 32 of the General Laws, as so appearing, is hereby amended by inserting after section 65J the following section:

Section 65K. Payments to a member retired under the provisions of sections 65A to 65J, inclusive, who is incarcerated for having been convicted of a felony committed on or after the effective date of this paragraph shall cease for the period of such member's incarceration. Under no circumstances shall such payments be recoverable by such member after such period of incarceration."

After debate on the question on adoption of the amendments, the sense of the House was taken by yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 20 members voted in the affirmative and 139 in the negative.

[See Yeas and Nays No. 72 in Supplement.]

Therefore the amendments were rejected.

Mr. Jones of North Reading and other members then moved to amend the bill in line 217, after the word "systems", by inserting the words "; potential costs, savings or benefits related to moving from a defined benefit retirement system to a defined contribution retirement system for new employees, including a system that maintains eligibility for employees to participate in the social security system".

After remarks the amendment was adopted.

Mr. Jones and other members then moved to amend the bill by inserting after section 19 (inserted by amendment by the House) the following section:

"SECTION 19A. Paragraph (b) of section 91 of Chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting, in line 84, after the word 'authority' the words:— including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, city, town, district or authority during regular business hours,"

Pending the question on adoption of the amendment, Mr. Jones of North Reading moved to amend it by striking out the proposed new section and inserting in place thereof the following two sections:

"SECTION 19A. Section 91 of said chapter 32 of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the words 'or district' and inserting in place thereof the following words:— , district or authority.

SECTION 19B. Said section 91 of said chapter 32 of the General Laws, as so appearing, is hereby further amended by inserting, in line 84, after the word 'authority' the words:— including as a consultant or independent contractor or as a person whose regular duties

Amendments rejected,—yea and nay No. 72.

require that his time be devoted to the service of the commonwealth, city, town, district or authority during regular business hours,".

After remarks on the question on adoption of the further amendment, the sense of the House was taken by yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 158 members voted in the affirmative and 0 in the negative.

[See Yeas and Nays No. 73 in Supplement.]

Therefore the further amendment was adopted, thus precluding a vote on the pending amendment.

Mr. Jones of North Reading and other members then moved to amend the bill by inserting after section 5 the following section:

"SECTION 5A. Paragraph (a) of subdivision (2) of section 5 of chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 84 to 98 inclusive, the words 'The normal yearly amount of the retirement allowance for any member classified in Group 1, Group 2 or Group 4, who has paid the full amount of regular deductions on the total amount of regular compensation, including deductions specified in subdivision (3A) of section three, and in paragraph (d) of subdivision (1) of section twenty-two, shall, subject to the limitations set forth in this section, be based on the average annual rate of regular compensation received by such member during any period of three consecutive years of creditable service for which such rate of compensation was the highest, or on the average annual rate of regular compensation received by such member during the period or periods, whether consecutive or not, constituting his last three years of creditable service preceding retirement, whichever is the greater, and shall be computed according to the following table based on the age of such member and his number of years and full months of creditable service at the time of his retirement.' and inserting in place thereof the following words:— For those who entered service prior to January 1, 2010, the normal yearly amount of the retirement allowance for any member classified in Group 1, Group 2 or Group 4, who has paid the full amount of regular deductions on the total amount of regular compensation, including deductions specified in subdivision (3A) of section three, and in paragraph (d) of subdivision (1) of section twenty-two, shall, subject to the limitations set forth in this section, be based on the average annual rate of regular compensation received by such member during any period of three consecutive years of creditable service for which such rate of compensation was the highest, or on the average annual rate of regular compensation received by such member during the period or periods, whether consecutive or not, constituting his last three years of creditable service preceding retirement, whichever is the greater, and shall be computed according to the following table based on the age of such member and his number of years and full months of creditable service at the time of his retirement. For those who entered service on or after January 1, 2010, the normal yearly amount of the retirement allowance for any member classified in Group 1, Group 2 or Group 4, who has paid the full amount of regular deductions on the total amount of regular compensation, including deductions specified in subdivision (3A) of section three,

Further amendment adopted,—yea and nay No. 73.

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and in paragraph (d) of subdivision (1) of section twenty-two, shall, subject to the limitations set forth in this section, be based on the average annual rate of regular compensation received by such member during all of the member's years of employment, with the average rate of regular compensation for each year adjusted for the inflation index from that year to the year of retirement of said member, and shall be computed according to the following table based on the age of such member and his number or years and full months of creditable service at the time of his retirement."

Amendment rejected,—yea and nay No. 74.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 20 members voted in the affirmative and 139 in the negative.

[See Yea and Nay No. 74 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the bill by inserting after section 19B (inserted by amendment by the House) the following section:

"SECTION 19C. Paragraph (f) of subdivision 2A of section 23 of chapter 32 is hereby amended by adding after the words 'of the board' the following:—, provided that the board shall award no compensation package that includes any incentive payments for performance in any year where the total value of the fund is reduced from the total value in the preceding year."

Amendment rejected,—yea and nay No. 75.

On the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 39 members voted in the affirmative and 119 in the negative.

[See Yea and Nay No. 75 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the bill by adding at the end of section 6 the following paragraph:

"(f) In any given year, no retirement allowance, as provided for by this chapter, shall exceed four hundred per cent of the average retirement allowance in the Commonwealth. The board shall determine the average retirement allowance in the Commonwealth as of January 1 of each year."

Amendment rejected,—yea and nay No. 76.

After remarks on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Jones; and on the roll call 20 members voted in the affirmative and 138 in the negative.

[See Yea and Nay No. 76 in Supplement.]

Therefore the amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the bill by adding at the end the following section:

"SECTION 24. Notwithstanding any general or special law to the contrary, the Massachusetts Bay Transportation Authority or any successor authority, shall enter into an agreement to establish or amend existing retirement or pension benefits only if any employee hired after the effective date of the agreement or amendment may

not receive a retirement or pension benefit prior to the completion of 25 years of credited pension service and attained 55 years of age. The Massachusetts Bay Transportation Authority is not prohibited by this section from permitting retirement prior to attaining age 55, provided however, that either: (i) the employee is entitled to a disability pension under the Massachusetts Bay Transportation Authority retirement system; or (ii) the employee has earned the maximum percentage allowed under the retirement formula of the Massachusetts Bay Transportation Authority retirement system and that the employee waives the ability to collect a pension and retirement benefit due until attaining age 55."

The amendment was adopted.

Mr. Jones of North Reading and other members then moved to amend the bill by inserting after section 13 (as printed) the following three sections:

"SECTION 12A. Paragraph (1) of section 10 of chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby further amended by striking out, in lines 5 to 7, inclusive, the words:—, or whose office or position is abolished, or is removed or discharged from his office or position without moral turpitude on his part.

SECTION 12B. Said paragraph (1) of said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 9 to 11, inclusive, the words:—, or is removed or discharged from his office or position without moral turpitude on his part, or any such member whose office or position has been abolished.

SECTION 12C. Said paragraph (1) of said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 51 to 53, inclusive, the words:—, or whose office or position is abolished, or is removed or discharged from his office or position without moral turpitude on his part."

After remarks on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 18 members voted in the affirmative and 141 in the negative.

Amendment rejected,—yea and nay No. 77.

[See Yea and Nay No. 77 in Supplement.]

Therefore the amendment was rejected.

Subsequently a statement of Ms. Campbell of Methuen was spread upon the records as follows:

MR. SPEAKER: During the taking of the previous roll call, I voted in the affirmative. I now find that for some inexplicable reason I was recorded in the negative.

Statement of Representative Campbell of Methuen.

Ms. Callahan of Sutton then moved to amend the bill by inserting after section 19B (inserting by amendment by the House) the following section:

"SECTION 19C. No quasi public agency, independent board or authority shall award, maintain or authorize post retirement employment consulting contracts to any former employee of a quasi public agency, independent board or authority who has retired and is receiving a retirement benefit.

Point of
order.

Mr. Welch of Springfield thereupon raised a point of order that the amendment offered by the lady from Sutton was improperly before the House for the reason that the subject-matter of said amendment had been previously considered in the same reading.

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

Ms. Callahan of Sutton then moved to amend the bill by inserting after section 19B (inserted by amendment by the House) the following section:

"SECTION 19C. Any current or preexisting practice of 'cashing-in' or 'selling back' unused vacation time of any amount that is then applied to the regular earnings of any employee of any quasi public agency, independent board or state authority to enhance total yearly earnings shall be hereby prohibited."

After remarks 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 37 members voted in the affirmative and 121 in the negative.

[See Yea and Nay No. 78 in Supplement.]

Therefore the amendment was rejected.

Ms. Polito of Shrewsbury then moved to amend the bill by adding the following section:

"SECTION 25. Section 2 of chapter 32B of the General Laws, as so appearing, is hereby amended by striking out the word 'twenty' in line 30 and inserting in place thereof the figure:— 30."

Mr. Pedone of Worcester thereupon raised a point of order that the amendment offered by the lady from Shrewsbury was improperly before the House for the reason that it went beyond the scope of the pending bill.

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

Ms. Polito then moved to amend the bill by striking out section 21 (as printed) and inserting in place thereof the following section:

"SECTION 20. Chapter 32 of the General Laws, as so appearing in the 2006 Official Edition, is hereby amended by adding the following section:—

Section 111. Notwithstanding the provisions of any general or special law to the contrary, a defined contribution system implementation plan commission will be appointed by the legislature to develop an effective and efficient plan to implement the defined contribution system to new public employees hired after October 1, 2009 as well as for any employee not vested as of October 1, 2009 who may elect to participate in the defined contribution system and have their associated accrued defined benefits transferred to the defined contribution system with state, county, city, or municipal 7 per cent match. This commission would additionally study the feasibility of combining all state and local public employee pension systems into one defined contribution system. A report on their findings shall be filed with the legislature within ninety days of the passage of this Act."

Amendment
rejected,—
yea and nay
No. 78.

Point of
order.

Pending the question on adoption of the amendment, the same member moved to amend it by striking out the text of proposed section 20 and inserting in place thereof the following section:

"SECTION 20. Chapter 182 of the acts of 2008 is hereby amended by striking out in section 111 and inserting in place thereof the following section:—

Section 111. Notwithstanding the provisions of any general or special law to the contrary, a defined contribution system implementation plan commission will be appointed by the legislature to develop an effective and efficient plan to implement the defined contribution system to new public employees hired after October 1, 2009 as well as for any employee not vested as of October 1, 2009 who may elect to participate in the defined contribution system and have their associated accrued defined benefits transferred to the defined contribution system with state, county, city, or municipal 7 per cent match. This commission would additionally study the feasibility of combining all state and local public employee pension systems into one defined contribution system. A report on their findings shall be filed with the legislature within ninety days of the passage of this Act. The commission shall consist of 17 members: 1 of whom shall be the secretary of administration and finance, or his designee; 1 of whom shall be the auditor of the commonwealth, or his designee; 1 of whom shall be executive director of the state retirement system board, or his designee; 1 of whom shall be the executive director of the teachers' retirement board, or her designee; 3 of whom shall be members of the house of representatives, 2 of whom shall be appointed by the speaker of the house and 1 of whom shall be appointed by the house minority leaders; 3 of whom shall be members of the Senate, 2 of whom shall be appointed by the senate president and 1 of whom shall be appointed by the senate minority leader; and 6 members to be appointed by the governor, 1 of whom shall be a private citizen who shall serve as chair of the commission and shall not be a member of any of the 106 contributory retirement systems, 2 of whom shall have professional experience in employee benefits or in actuarial science, 1 of whom shall be a member of the Massachusetts Municipal Association; 1 of whom shall be selected from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO; and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts. The commission shall convene its first official meeting no later than June 1, 2009."

After debate the further amendment was rejected.

The amendment then also was rejected.

Ms. Polito of Shrewsbury then moved to amend the bill by adding the following section:

"SECTION 25. The Pension Reserves Investment Management Board must report to the chairs of the House and Senate Committees on Ways and Means in addition to the clerks of both branches within ninety days of the passage of this Act on what the unfunded liabilities are. After this initial report the Board will continue to report

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to these committees annually on the 1st of July the status of the unfunded liabilities.”.

The amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the bill by inserting after section 19B (inserted by amendment by the House) the following section:

“SECTION 19C. Section 22D of Chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is amended by striking out in line 25 the figure ‘2028’ and inserting in place thereof the following figure:— 2030.”.

After remarks on the question on adoption of the amendment, the sense of the House was taken by yeas and nays at the request of Mr. Peterson of Grafton; and on the roll call 159 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 79 in Supplement.]

Therefore the amendment was adopted.

Mr. Fagan of Taunton then moved to amend the bill [A] by striking out section 3 and inserting in place thereof the following section:

“SECTION 3. Said section 1 of said chapter 32 of the General Laws, as so appearing, is hereby further amended by inserting after the word ‘employment’, in line 21, the following words:— Any income that is taxed under the Federal Income Tax Code shall be deemed income for retirement purposes.”.

Pending the question on adoption of the amendment, the same member moved that it be amended by striking out the text of said amendment [at “A”] and inserting in place thereof the following: “in line 210, after the word ‘system’, by inserting the words ‘; the definition of regular compensation including, but not limited to, whether all forms of compensation taxable under the federal income tax code should constitute regular compensation”.

The further amendment was adopted, thus precluding a vote on the pending amendment.

Mr. Jones of North Reading and other members then moved to amend the bill in section 6 by adding the following paragraph:

“(f) Notwithstanding any general or special law to the contrary, if greater than fifty per cent of a member’s regular compensation is for duties performed as a member of one employment group, as enumerated in paragraph (g) of subdivision (2) of section 3 of chapter 32 of the General Laws, he shall be considered a member of that employment group for the purposes of retirement, including superannuation retirement.”.

The amendment was rejected.

Mr. Evangelidis of Holden then moved to amend the bill by adding the following section:

“SECTION 25. Paragraph (c) of subdivision (2) of section 5 of Chapter 32 is amended by striking in line 106 the words ‘four-fifths’ and inserting in place thereof the following:— three quarters.”.

After remarks the amendment was rejected.

Mr. Brownsberger of Belmont then moved to amend the bill in lines 60 and 61 by striking out the words ‘; provided, however, that

Amendment
adopted,—
yea and nay
No. 79.

this paragraph shall not apply to a member who has received part-time creditable service in 1 or more systems”.

The amendment was adopted.

The same member then moved to amend the bill by inserting after section 10 the following section:

“SECTION 10A. Section 5(1)(m) of Chapter 32 of the General Laws is hereby amended by striking the words:— except for elected officials subject to the provisions of paragraph (b) of subdivision (2) of section ten.”.

The amendment was adopted.

Mr. Walsh of Boston and other members then moved to amend the bill by striking out [A] section 3 and inserting in place thereof the following section:

“SECTION 3. Section 1 of Chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting in line 399 after ‘forty-five,’ the following: ‘and up to and including July first, two thousand nine’. Said Section 1 is further amended by striking in line 401 after the words ‘employing authority,’ the following ‘not including bonuses, overtime, severance pay for any and all unused sick leave, early retirement incentives, or any other payments made as a result of giving notice of retirement’. And inserting with the following: ‘not including overtime, amounts paid for commissions, bonuses other than cost-of-living bonuses, payment in lieu of sick leave, the payment of termination, severance, or dismissal, any amounts paid as early retirement incentives or any other payment made as a result of giving notice of retirement, amounts derived from any salary enhancements or salary augmentations plans which will recur for a limited or definite term, in-kind or any payments such as for housing, lodging, travel, annuities, or welfare benefits, lump sum buyouts for workers’ compensation benefits, job related expense payments, automobile usage, insurance premiums, dependent care assistance, tuition, payments in kind, other than cash received by an individual from his employing unit for services rendered.’.”

Pending the question on adoption of the amendment, Mr. Walsh of Boston and other members moved to amend it by striking out the text of said amendment [at “A”] and inserting in place thereof the following: “sections 2 and 3 and inserting in place thereof the following two sections:—

SECTION 2. Said section 1 of said chapter 32 of the General Laws, as so appearing, is hereby further amended by striking out, in line 433, the word ‘term.’ and inserting in place thereof the following words:—

‘Regular compensation’ during any period subsequent to June 30, 2009 compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.

SECTION 3. Said section 1 of said chapter 32 of the General Laws, as so appearing, is hereby further amended by inserting at the end thereof the following definition:—

‘Wages’ the base salary or other base compensation of an employee paid to that employee for employment by an employer. The term wages shall not include, without limitation, overtime, commissions,

Pension reform.

bonuses other than cost-of-living bonuses, amounts derived from any salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or any payments for such items as housing, lodging, travel, clothing allowance, annuities, welfare benefits, lump sum buyouts for workers' compensation benefits pursuant to section 111F of chapter 41, workers' compensation benefits, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, one-time lump sum payments in lieu of or for unused vacation or sick leave, or the payment for termination, severance, dismissal, or any amounts paid as premiums for working holidays, except in the case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen, money paid for holidays shall be regarded as regular compensation, any amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member's retirement, tuition or any other fringe benefits, payments in kind and all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, shall not, regardless of federal taxability, be considered regular compensation."

The further amendment was adopted, thus precluding a vote on the pending amendment.

Mr. Fallon of Malden then moved to amend the bill by adding the following section:

"SECTION 25. Section 42(b) of said chapter 32 of the General Laws is hereby amended by adding the following language to the end of said section:— Notwithstanding the above-language, any city of town that makes use of a reserve list may decline this section by an affirmative vote by the local governing agency, assented to by the appointing authority as defined by M.G.L. c. 31, Section 1 and effective the date said vote and assent is formally submitted to the Civil Service Commission."

The amendment was adopted.

Mr. Fagan of Taunton then moved to amend the bill by striking out section 24 (as printed) and inserting in place thereof the following two sections:

"SECTION 23A. Section 1 of this act shall take effect July 1, 2009.

SECTION 23B. Section 5 of this act shall take effect July 1, 2010 and shall apply to any state, county or municipal employee first employed or elected after July 1, 2010."

The amendment was adopted.

Mr. Smith of Everett then moved to amend the bill in line 54 by striking out the words "who has been a member" and inserting in place thereof the words "who becomes a member", and in line 55 by striking out the words "has received" and inserting in place thereof the word "receives".

The amendments were rejected.

Mr. Fallon of Malden then moved to amend the bill in line 18 (as printed), after the word "differentials", by inserting the words "amounts paid and contained in the collective bargaining agreement

as regular annual employer buy-backs of vacation and sick time, amounts paid as premiums for working holidays", in line 24 (as printed), after the word "bonuses", by inserting the words "amounts paid for accumulated vacation or sick time, other than regular and annual buy-backs", in line 30 (as printed) by striking out the words "payment in lieu of or for unused vacation or sick leave, or", and in line 31 (as printed) by striking out the words "or any amounts paid as premiums for working holidays, except as authorized by law".

The amendments were rejected.

Mr. Fresolo of Worcester then moved to amend the bill in line 31 (as printed), after the word "dismissed", by striking out the words "or any amounts paid as premiums for working holidays"; and the amendment was rejected.

Mr. Jones of North Reading and other members then moved to amend the bill by adding at the end the following section:

"SECTION 26. Section 28M of Chapter 32 of the General Laws is hereby amended by striking out the first sentence and inserting in place thereof the following new sentence:— Notwithstanding the provisions of sections one to twenty-eight, inclusive, any employee of the department of correction, classified under Group 4, whose major responsibilities include the care and custody of prisoners, and any transportation officer working within the department of correction, who has performed services in the department of correction for not less than twenty years, provided, the majority of years of service was performed within one or more titles in Group 4, shall, at his own request, be retired by said retirement board."

The amendment was adopted.

On the question on passing the bill, as amended, to be engrossed, in concurrence, the sense of the House was taken by yeas and nays at the request of Mr. Spellane of Worcester; and on the roll call (Mr. Donato of Medford being in the Chair) 156 members voted in the affirmative and 0 in the negative.

[See Ye and Nay No. 80 in Supplement.]

[Ms. Spiliotis of Peabody answered "Present" in response to her name.]

Therefore the bill (Senate, No. 2026, amended) was passed to be engrossed, in concurrence (for text of bill, as amended by the House, see House document numbered 4060). Sent to the Senate for concurrence in the amendment.

Subsequently a statement of Mr. Flynn of Bridgewater 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, on the previous roll call, I was not notified of the roll call taking place and therefore was not recorded. Had I been present, I would have voted in the affirmative.

Order.

On motion of Mr. DeLeo of Winthrop,—
Ordered. That when the House adjourns today, it adjourn to meet on Thursday next at eleven o'clock A.M.

Bill passed to be engrossed,—
yea and nay
No. 80.

Statement of Representative Flynn of Bridgewater.

Next sitting.

Accordingly, without further consideration of the remaining matter in the Orders of the Day, at a quarter after six o'clock P.M., on motion of Mr. Jones of North Reading (Mr. Donato of Medford being in the Chair), the House adjourned, to meet the following Thursday at eleven o'clock A.M., in an Informal Session.