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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Monday, December 20, 2004.

Met at one minute past eleven o'clock A.M. (Ms. Wilkerson in the Chair) (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

The Chair (Ms. Wilkerson), members, guests and employees then recited the pledge of allegiance to the flag.

Distinguished Guests.

There being no objection, the Chair (Ms. Wilkerson) handed the gavel to Senator Brown who introduced, seated in the Senate gallery, eighth grade students from Noble and Greenough School in Dedham.

Communications.

Ms. Wilkerson in the Chair, the following communications were severally placed on file:

Communication from the Massachusetts Highway Department (pursuant to line item 6010-0001 of the General Appropriation Act of fiscal year 2005) relative to quarterly reports required by line item 6010-0001 of the FY'05 budget (received Tuesday, December 14, 2004); and

Communication from Middlesex Community College (pursuant to the provisions of Section 15E of Chapter 15A of the General Laws) relative to procedures adopted for implementing the Public Higher Education Endowment Incentive Program (received Tuesday, December 14, 2004) (a copy having been forwarded to the Chairperson of the Senate Committee on Ways and Means).

Reports.

The following reports were severally read and placed on file:

A report of the Division of Unemployment Assistance (under the provisions of Section 14F of Chapter 151A of the General Laws, as most recently amended by Section 6 of Chapter 142 of the Acts of 2003) relative to the condition of the Unemployment Insurance Trust Fund for the month of November 2004 (received Thursday, December 16, 2004); and

A report of the Norfolk County Register of Deeds (under the provisions of Section 4 of Chapter 4 of the Acts of 2003 and Section 2KKK of Chapter 29 of the General Laws) submitting a plan of expenditure from the County Registers Technological Fund (received Friday, December 17, 2004) (copies having been forwarded to the Chairs of the Senate Committees on Ways and Means and Post Audit and Oversight).

A report of the Department of Public Health (under the provisions of Sections 5 and 20 of Chapter 111 of the General Laws) relative to inspection of the Old Colony Correctional Center (received Sunday, December 12, 2004),— **was read and sent to the House for its information.**

Petition.

Mr. Tarr presented a petition (subject to Joint Rule 12) of Bruce E. Tarr, Richard T. Moore, Scott P. Brown, William Smitty Pignatelli and other members of the General Court for legislation to facilitate cost recovery for claims arising from major infrastructure improvements in the Commonwealth,— **and the same was referred, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.**

Reports of a Committee.

Mr. Magnani, for the committee on Steering and Policy, reported that the following matters be placed in the Orders of the Day for the next session:

The Senate Bill relative to civil service and firefighters (Senate, No. 3), and

The House bills

Relative to the definition of blind persons (House, No. 7); and

Directing the Commissioner of Revenue to accept a certain application for abatement of taxes (House, No. 5123).

Resolutions.

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

Resolutions (filed by Ms. Fargo, Messrs. Hedlund, Magnani, McGee, Moore and Morrissey, Ms. Murray, Messrs. Pacheco, Rosenberg and Tolman and Ms. Tucker) “congratulating Representative Mary Jeanette Murray on the occasion of her eightieth birthday”; and

Resolutions (filed by Mr. Hedlund) “congratulating the Hingham High School Football Team.”

Engrossed Bill Returned by Governor With Recommendation of Amendment.

The engrossed Bill establishing standards for long-term care insurance (see Senate, No. 2415, amended) (which on Thursday, December 9, 2004, had been laid before the Governor for his approbation), was returned to the Senate Clerk by the Governor on Friday, December 17, 2004 at one minute before two o'clock P.M., with a message recommending an amendment [for message, see Senate, No. 2516].

The message (Senate, No. 2516) was read and the Senate proceeded to reconsider the bill, in accordance with the provisions of Article LVI of the Amendments to the Constitution.

Pending action thereon, the bill was referred to the committee on Bills in the Third Reading, on motion of Ms. Tucker.

Engrossed Bill Returned by Governor.

The engrossed Bill relative to creditable service for vocational education teachers (see Senate, No. 1559, amended) (which on Thursday, December 9, 2004, had again been laid before the Governor for his approbation) was returned, with his objections thereto in writing, by His Excellency the Governor, on Friday, December 17, 2004 at sixteen minutes before five o'clock P.M. [for message see Senate, No. 2517].

The message (Senate, No. 2517) was read, and, on motion of Mr. Nuciforo, referred to the committee on Bills in the Third Reading.

Reports of a Committee.

By Ms. Murray, for the committee on Ways and Means, that the House Bill authorizing the Commissioner of the Division of Capital Asset Management and Maintenance to convey a certain parcel of land in the town of Saugus to Thomas G. Kennedy (House, No. 5110),— ought to pass.

There being no objection, the rules were suspended, on motion of Mr. Barrios, and the bill was read a second time.

Pending the question on ordering the bill to a third reading, Mr. McGee presented an amendment in section 1, by inserting after the word “convey”, in line 3, the following words:— “, upon such terms and conditions as the commissioner may prescribe.”.

The amendment was adopted.

The bill, as amended, was then ordered to a third reading, read a third time and passed to be engrossed, in concurrence, with the amendment, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act authorizing the Commissioner of Capital Asset Management and Maintenance to convey a certain parcel of land in

**the town of Saugus to Thomas G. Kennedy.”
Sent to the House for concurrence in the amendment.**

By Ms. Murray, for the committee on Ways and Means, on petition (accompanied by bill, Senate, No. 2512), a Bill relative to the financial conditions in the town of Southbridge (Senate, No. 2518) [Local approval received on Senate, No. 2512].

The bill was read. There being no objection, the rules were suspended, on motion of Ms. Tucker, and the bill was read a second time and ordered to a third reading.

By Ms. Murray, for the committee on Ways and Means, that the Senate Bill establishing a sick leave bank for James E. Vesey, an employee of the Boston Municipal Court (Senate, No. 2513),— ought to pass, with an amendment in section 1, by striking out the words “Boston Municipal Court”, in lines 1 and 2, 4, 7 and 9, and inserting in place thereof, in each instance, the following words:— “trial court”; 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 forthwith to establish a sick leave bank for a certain employee of the trial court, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”; and by striking out the title and inserting in place thereof the following title: “An Act establishing a sick leave bank for James E. Vesey, an employee of the Trial Court.”.

There being no objection, the rules were suspended, on motion of Mrs. Sprague, and the bill was read a second time and was amended, as recommended by the committee on Ways and Means.

The bill (Senate, No. 2513, amended) was then ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence.

By Ms. Murray, for the committee on Ways and Means, that the House Bill establishing a sick leave bank for Thomas McCabe, an employee of MCI-Norfolk (House, No. 4794, amended),— ought to pass.

There being no objection, the rules were suspended, on motion of Mr. Nuciforo, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: “An Act establishing a sick leave bank for Thomas McCabe, an employee of the Department of Correction.”

Matter Taken Out of the Orders of the Day.

There being no objection, the following matter was taken out of the Orders of the Day and considered, as follows:

The House Bill designating a certain bridge in the town of Chelmsford as the Marine Lance Corporal Andrew J. Zabierek Memorial Bridge (House, No. 5103),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

PAPERS FROM THE HOUSE.

A Bill relative to the Unified Session Clerk in Suffolk County (House, No. 5130,— on petition),— was read.

There being no objection, the rules were suspended, on motion of Ms. Tucker, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

Bills Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of an amendment the engrossed Bill relative to compensation for certain erroneous felony convictions (see House, No. 4255, amended) [for message, see House, No. 5030],— came from the House with endorsement that the House *rejected* the amendment recommended by the Governor (as approved by the House Committee on Bills in the Third Reading) and amended the bill by striking out all after the enacting clause and inserting in place thereof the text of House document numbered 5148.

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The rules were suspended, on motion of Mr. Barrios, and the Governor’s amendment was rejected.

The same Senator moved the Senate concur with the House amendment, with a further amendment (Wilkerson/Barrios) striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2519.

The further amendment was adopted.

The House Bill further preventing insurance fraud in the Commonwealth (House, No. 4713, amended),— came from the House with the endorsement that the House had concurred in the Senate amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2510, *with further amendments* striking out section 3 and inserting in place thereof the following section:

“SECTION 3. Section 23P½ of said chapter 112, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:—

A physical therapist or physical therapist assistant whose license, certificate, registration or authority relating to the practice is suspended for professional misconduct with regard to insurance claims for more than one year shall not own, operate, practice in, or be employed by any chiropractic or physical therapy office, clinic, or other place designated to the practice of chiropractic or physical therapy until the license is re-installed by the board.

A physical therapist or physical therapist assistant whose license, certificate, registration or authority relating to the practice is suspended for any second offense with regard to insurance claims shall have their licenses permanently revoked.

A physical therapist or physical therapist assistant whose license, certificate, registration or authority relating to the practice is revoked with regard to insurance claims shall not own, operate, practice in, or be employed by any chiropractic or physical therapy office, clinic, or other place designated to the practice of chiropractic or physical therapy.”; by striking out section 6 and inserting in place thereof the following section:

“SECTION 6. Section 95 of said chapter 112, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:—

A chiropractor whose license, certificate, registration, or authority relating to the practice is suspended for professional misconduct with regard to insurance claims for more than one year shall not own, operate, practice in, or be employed by any chiropractic or physical therapy office, clinic, or other place designated to the practice of chiropractic medicine or physical therapy until the license is re-instated by the board.

A chiropractor whose license, certificate, registration, or authority relating to the practice is suspended for any second offense with regard to insurance claims shall have their license permanently revoked.

A chiropractor whose license, certificate, registration, or authority relating to the practice is revoked with regard to insurance claims shall not own, operate, practice in, or be employed by any chiropractic or physical therapy office, clinic, or other place designated to the practice of chiropractic or physical therapy.”; in section 7, in lines 15 to 32, inclusive, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:—

“(b) At least annually, the medical licensing boards who receive funding pursuant to paragraph (3) of subsection (d) shall review the data made available to them by the Automobile Insurers Bureau of Massachusetts for indication of overutilization of practice or fraud involving automobile insurance claims by individual practitioners or by provider groups. Where overutilization of practice or fraud involving automobile insurance claims by 1 or more licensees is suspected, the board shall conduct an investigation. If the investigation results in evidence that a pattern of fraud, overutilization of practice, or professional misconduct exists, the medical licensing boards shall initiate professional disciplinary proceedings to determine whether that practitioner’s or provider group’s license should be suspended, revoked, or be subjected to some other appropriate penalty.”; in said section, in line 61 and also in line 69, by striking out the words “over-treatment” and inserting in place thereof, in each instance, the words “overutilization of practice”; and by adding at the end thereof the following section:

“SECTION 9. Section 23B, of chapter 112 of the Massachusetts General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the paragraph contained in lines 17 through 26, inclusive, and inserting in place thereof the following paragraph:—

Licenses shall expire every two years on the birth anniversary of the licensee. Licensees shall pay to the board a renewal fee determined by the secretary of administration and finance. The board may require specific continuing education as a condition of license renewal. The board may provide for the late renewal of a license that has lapsed and may require the payment of a late fee, an examination, continuing education, and supervised experience prior to issuing said renewed license. For purposes of implementing the transition to birthday renewals, for licenses renewing on or about January 2006, the board may issue licenses that expire in less than two years.”.

The rules were suspended, on motion of Ms. Tucker, and the House amendment was considered forthwith and adopted, in concurrence.

Engrossed Bills.

The following engrossed bills (the first four of which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the Acting President and laid before the Governor for his approbation, to wit:

Authorizing the town of Hull to extend leases on Nantasket Pier and to borrow money for the construction of a certain marine or pier facility for a term of not to exceed 30 years (see Senate, No. 2214, amended);
Authorizing the town of Hull to extend the leases at Pemberton Pier (see Senate, No. 2215, amended);

Relative to the state retirement system (see Senate, No. 2458, amended);
Relative to the by-laws of the town of Plymouth (see Senate, No. 2481);
Authorizing Martha's Vineyard affordable housing covenants (see House, No. 1510, amended); and
Establishing municipal affordable housing trust funds (see House, No. 4709, amended).

Emergency Preamble Adopted.

An engrossed Bill relative to group marketing plans (see House, No. 4808), having been certified by the Senate Clerk to be rightly and truly prepared for final passage and containing an emergency preamble,— was laid before the Senate; and, a separate vote being taken in accordance with the requirements of Article LXVII of the Amendments to the Constitution, the preamble was adopted in concurrence, by a vote of 5 to 0.

The bill was signed by the Acting President and sent to the House for enactment.

The Senate Bill relative to banks and banking (Senate, No. 2045, amended),— came from the House with the endorsement that the House had concurred in the Senate amendments in section 13, in lines 29 to 43, inclusive, striking out the paragraph contained therein and inserting in place thereof the following paragraph:—

“Section 2. The main office of a bank shall be in the town specified in its charter or in its agreement of association, or in such other town to which the office has been lawfully moved or to which it may be moved as provided in this section. The location of the main office of a bank may be changed to a point in the town of its location with the written consent of the commissioner with the approval of the board of bank incorporation and upon the vote of two-thirds of the corporators or members and the approval of its board of trustees or board of directors present at a meeting called for the purpose, a bank may change the location of its main office to another town within the commonwealth by appropriate amendment of its charter or of its agreement of association, a copy of which amendment shall be filed immediately with the secretary of state.”; in section 18, in line 17, inserting after the following: “1999.” the following sentence: “Notwithstanding any general or special law to the contrary, this chapter does not authorize a bank or a subsidiary or affiliate of a bank to sell title insurance.”; in section 23, in line 17, inserting after the word “person” the words “, other than an attorney licensed to practice law in the commonwealth,”; and NON-concurred with the Senate in its amendment by adding at the end thereof the following section:

“SECTION 26. Notwithstanding anything to the contrary contained in this act, a person lawfully engaged in the business of providing trust and fiduciary services in the commonwealth on January 1, 2004 may continue to engage in that business if the person obtains a certificate pursuant to section 9A of chapter 172 of the General Laws within 1 year of the effective date of this act.”.

The rules were suspended, on motion of Mr. Nuciforo, and the matter was considered forthwith. The same Senator moved that the Senate recede from its amendment in Section 26 and this motion prevailed.

Recess.

There being no objection, at five minutes past twelve o'clock noon, the Chair (Ms. Wilkerson) declared a recess subject to the call of the Chair; and, at two minutes past one o'clock P.M., the Senate reassembled, Ms. Wilkerson in the Chair.

PAPERS FROM THE HOUSE.

Engrossed Bills.

The following engrossed bills (the first of which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the Acting President and laid before the Governor for his approbation, to wit:

Relative to banks and banking (see Senate, No. 2045, amended);
Relative to group marketing plans (see House, No. 4808); and
Relative to the Unified Session Clerk in Suffolk County (see House, No. 5130).

Order Adopted.

On motion of Mr. Nuciforo,-

Ordered, That when the Senate adjourns today, it adjourn to meet again on Thursday next at eleven o'clock A.M., and that the Clerk be directed to dispense with the printing of a calendar.

Adjournment in Memory of Mr. R. Arnold Wakelin.

The Senator from Norfolk, Bristol and Middlesex, Mr. Brown, and the Senator from the First Middlesex and Norfolk District, Ms. Creem, moved that when the Senate adjourns today it adjourn in memory of Mr. R. Arnold Wakelin of Wellesley.

Mr. Wakelin was a long time dedicated employee of the town of Wellesley. He served as comptroller from 1962-1979, director of financial services from 1979-1993 and chief financial officer from 1993 until his death on Monday, November 8, 2004.

Accordingly, as a mark of respect to the memory of R. Arnold Wakelin, at five minutes past one o'clock P.M. on motion of Mr. Hedlund, the Senate adjourned to meet again on Thursday next at eleven o'clock A.M.