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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Monday, December 5, 2005.

Met at three minutes past eleven o'clock A.M. (Ms. Wilkerson in the Chair).

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

Communication.

A communication from the Executive Office of Transportation (pursuant to Chapter 210 of the Acts of 1997) relative to projected revenues and expenditures for the Safety Inspection Trust Fund Account (received Friday, December 2, 2005),— **was placed on file.**

Reports.

The following reports were severally read and placed on file:

A report of the Department of Conservation and Recreation (under the provisions of Section 3C of Chapter 21 of the General Laws, as amended by Section 84 of Chapter 26 of the Acts of 2003) submitting a copy of its Annual Report for Fiscal Year 2005 (received Wednesday, November 30, 2005); and

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 October 2005 (received Thursday, December 1, 2005).

Petitions.

Petitions were presented and referred as follows:

By the same Senator, a petition (accompanied by bill, Senate, No. 2304) of Patricia D. Jehlen, Denise Provost, Dennis M. Sullivan and others (by vote of the town) for legislation to amend Sec. 21 of the charter of the city of Somerville to allow the appointment of a non-civil service chief of police;

Under Senate Rule 20, to the committee on Municipalities and Regional Government.

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 2303) of Patricia D. Jehlen, Denise Provost, Dennis M. Sullivan and others (by vote of the town) for legislation to exempt the position of chief of police in the city of Somerville from the provisions of civil service law;

Under Senate Rule 20, to the committee on Public Service.

Severally sent to the House for concurrence.

Petitions were presented and referred, as follows:

By Ms. Fargo, a petition (subject to Joint Rule 12) of Susan C. Fargo for legislation to authorize arbitration of the termination of Stephen Scanlon by the Sheriff of Suffolk County;

By Mr. Havern, a petition (subject to Joint Rule 12) of Robert A. Havern and William G. Greene, Jr. for legislation to designate a certain bridge in the town of Billerica; and

By Mr. Moore, a petition (subject to Joint Rule 12) of Richard T. Moore, Jennifer M. Callahan, Edward M. Augustus, Jr., James E. Timilty and other members of the General Court for legislation relative to reforming Chapter 40B;

Severally, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.

Reports of Committees.

By Ms. Tucker, for the committee on Elder Affairs, on Senate, Nos. 377, 388 and 389, an Order relative to authorizing the joint committee on Elder Affairs to make an investigation and study of Senate documents numbered 377, 388 and 389 relative to nursing homes (Senate, No. 2296);

By Mr. Tolman, for the committee on Mental Health and Substance Abuse, on petition (accompanied by bill, Senate, No. 126), an Order relative to authorizing the joint committee on Mental Health and Substance Abuse to make an investigation and study of Senate document 126 relative to psychotropic drug information (Senate, No. 2297);

By Ms. Fargo, for the committee on Public Health, on Senate, Nos. 1229 and 1271, an Order relative to authorizing the joint committee on Public Health to make an investigation and study of Senate documents numbered 1229 and 1271 relative to public health issues (Senate, No. 2298); and

By Mr. Hart, for the committee on Tourism, Arts and Cultural Development, on Senate, Nos. 2045 and 2046, an Order relative to authorizing the joint committee on Tourism, Arts and Cultural Development to make an investigation and study of Senate documents numbered 2045 and 2046 relative to Somerville (Senate, No. 2299) [Local approval received on Senate, Nos. 2045 and 2046];

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

By Ms. Jehlen, for the committee on Public Service, on petition (accompanied by bill, Senate, No. 1525), a Bill relative to the retirement allowance for certain teachers (Senate, No. 2302); and

By Mr. Morrissey, for the committee on Telecommunications, Utilities and Energy, on petition, a Bill relative to the renewable energy portfolio (Senate, No. 2122);

Severally read and, under Senate Rule 27, referred to the committee on Ways and Means.

PAPERS FROM THE HOUSE.

A petition (accompanied by bill, House, No. 4556) of Charles A. Murphy (by vote of the town) for legislation to regulate the number of write-in votes for the office of town meeting member in the town of Burlington,— **was referred, in concurrence, to the committee on Election Laws.**

A Bill further regulating the opening of retail stores on Sundays (House, No. 4555,— on House, No. 3667),— **was read and, under Senate Rule 27, referred to the committee on Ways and Means.**

Notice was received from the House that the Speaker announced the following nomination and appointments:

That Mr. James T. Morris had been nominated (pursuant to section 3 of chapter 12A of the General Laws) to the Inspector General's Council; and

That Mr. Matthew Machera, Esq., had been appointed to the special commission established (pursuant to section 6 of chapter 54 of the Acts of 2005) to study and analyze the imposition of civil penalties on certain offenses within the Commonwealth.

Resolutions.

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

Resolutions (filed by Ms. Resor and Mr. Havern) “on the retirement of Fire Chief John Thomas Kyle”; and

Resolutions (filed by Mr. Rosenberg) “celebrating the fortieth anniversary of Franklin Community Action Corporation.”

Report of a Committee.

By Mr. Buoniconti, for the committee on Ethics and Rules, that the Senate Bill designating a certain bridge in the town of Falmouth the Raleigh D. Costa memorial bridge (Senate, No. 1935), be placed in the Orders of the Day for the next session. **There being no objection, the rules were suspended, on motion of Ms. Fargo, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, its title having been changed by the committee in Bills in the Third Reading to read as follows: "An Act designating a certain bridge in the town of Falmouth as the Raleigh D. Costa memorial bridge."**
Sent to the House for concurrence.

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 Senate Bill relative to the town of Billerica EMS (Senate, No. 2093),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act changing the retirement classification of emergency medical services employees in the town of Billerica".**
Sent to the House for concurrence.

PAPERS FROM THE HOUSE.

A Bill authorizing certain by-laws relative to the town of Wellesley (House, No. 4295,— on petition) [Local approval received],— was read.

There being no objection, the rules were suspended, on motion of Mr. Tisei, 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 authorizing a department of financial services in the town of Wellesley".

A Bill authorizing Julio Perez to take the civil service examination for the position of firefighter in the city of Haverhill notwithstanding the maximum age requirement (House, No. 4119,— on petition) [Local approval received],— was read.
There being no objection, the rules were suspended, on motion of Ms. Fargo, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

There being no objection, at thirteen minutes past eleven o'clock A.M., the Chair (Ms. Wilkerson), declared a recess subject to the call of the Chair; and, at twenty-three minutes before one o'clock P.M., the Senate reassembled, the President in the Chair.

Distinguished Guests.

There being no objection, the President handed the gavel to Mr. Tarr for the purpose of an introduction. Mr. Tarr introduced, seated at the rear of the Chamber, the Moker Family from Georgetown. The Mokers were guests of Senator Tarr and Representative Hill of Ipswich.

PAPER FROM THE HOUSE.

Bill Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill relative to tax laws (see House, No. 4169, amended) [for message, see House, No. 4520],— came from the House with endorsement that the House adopted the amendment recommended by the Governor (as approved by committee on Bills in the Third Reading), was amended as follows:

By striking out section 57 and inserting in place thereof the following 3 sections:

“SECTION 57. Section 413 of chapter 149 of the acts of 2004 is hereby repealed.

SECTION 57A. The introductory clause of Section 414 of said chapter 149 is hereby amended by striking out the date ‘January 1, 2002’ and inserting in place thereof the following date:— January 1, 2003.

SECTION 57B. Notwithstanding any general or special law to the contrary, to the extent that, as a result of the enactment of section 57 and 57A, any taxpayer has overpaid tax due under chapter 62 of the General Laws with respect to long term capital gains recognized in taxable years beginning on or after January 1, 2002 and before January 1, 2003, the following provisions shall apply:

(a) Such taxpayers may apply for abatement of the overpayment of tax on long-term capital gains for said taxable years pursuant to section 37 of chapter 62C of the General Laws on or before June 30, 2006, within 3 years from the due date for such return,

determined without regard to extensions, within 2 years from the date of assessment or deemed assessment of such tax on long-term capital gains, or within 1 year of the date of payment of such tax on long-term capital gains, whichever is later.

(b) The taxpayer must apply for such abatement upon the forms or in the manner determined by the commissioner of revenue, and shall provide such documentation of the overpayment as said commissioner may require.

(c) The commissioner shall abate any such overpayment in 4 annual installments, substantially equal in amount, without interest.

(d) The commissioner shall offset any proposed abatement under this section by the amount of any additional tax due from the taxpayer under chapter 62 of the General Laws for the taxable year, whether or not the additional tax relates to capital gains, and whether or not such additional tax may otherwise be timely assessed under said chapter 62C of the General Laws.

(e) An amount due to be refunded to a taxpayer under this section shall not be treated as a tax payment or credit until such time as it becomes payable under paragraph (c).

(f) This section shall be the exclusive basis for any claim for refund of an overpayment of tax under chapter 62 of the General Laws with respect to long term capital gains recognized in taxable years beginning on or after January 1, 2002, and before January 1, 2003, and resulting from enactment of sections 57 and 57A of this act. No interest shall accrue or be payable with respect to such refunds, pursuant to section 40 of chapter 62C of the General Laws or otherwise.

(g) To the extent not inconsistent with the provisions of this act, the provisions of chapter 62C of the General Laws, including without limitation provisions allowing offsets of refunds for unpaid tax assessments, child support obligations, or other applicable obligations, shall apply to refunds under this section.

(h) Notwithstanding paragraph (c), for reasons of administrative convenience, the commissioner may in his discretion, refund payments to a taxpayer that total \$1000 or less in a single lump sum, without interest.”; and by striking out section 56.

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. Lees, and the amendment considered forthwith and adopted, in concurrence. Sent to the House for re-enactment.

Recess.

There being no objection, at twenty minutes before one o'clock P.M., the President declared a recess subject to the call of the Chair; and, at twelve minutes past two o'clock P.M., the Senate reassembled, the President in the Chair.

Emergency Preamble Adopted; Engrossed Bill Re-Enacted.

An engrossed Bill relative to tax laws (see House, No. 4169, amended), 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 2 to 0.

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

Subsequently, the bill, which originated in the House, came from the House with the endorsement that it had been re-enacted in that branch.

The Senate then passed the bill to be re-enacted; and it was signed by the Acting President (Mr. Lees) (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair) and again laid before the Governor for his approbation.

Order Adopted.

The President in the Chair, on motion of Mr. Lees,—

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.

On motion of the same Senator, at eighteen minutes past two o'clock P.M., the Senate adjourned to meet on the following Thursday at eleven o'clock A.M.