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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, February 4, 2010.

Met according to adjournment at one o'clock P.M. (Mr. Rosenberg in the Chair).

Petition.

Mr. Tisei, a petition (subject to Joint Rule 12) of Richard R. Tisei, James Dwyer and Bradley H. Jones, Jr. for legislation to establish a sick leave bank for Sean O'Brien, an employee of the Department of Transitional Assistance

Reports of a Committee.

By Ms. Baddour, for the committee on Transportation, on petition, a Bill relative to the transportation of individuals seated in wheelchairs (Senate, No. 1948);

By the same Senator, for the same committee, on petition, a Bill to provide counseling services and medical leave for crew members of a railroad company involved in an accident resulting in loss of life or serious bodily injury (Senate, No. 1982);

By the same Senator, for the same committee, on petition, a Bill relative to first aid kits and fire extinguishers on trains (Senate, No. 1987); and

By the same Senator, for the same committee, on petition, a Bill relative to increasing the fine for handicapped parking violations (Senate, No. 2016);

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

By Mr. Baddour, for the committee on Transportation, on petition, a Bill designating a certain bridge in the town of Raynham as the Cpl Brian Oliveira Bridge (Senate, No. 1949);

By the same Senator, for the same committee, on petition, a Bill relative to designating a certain bridge in the town of Medfield as the Senator Leverett Saltonstall Bridge (Senate, No. 1971); and

By the same Senator, for the same committee, on petition, a Bill designating a certain bridge in the town of Dover as the Governor Francis W. Sargent Bridge (Senate, No. 1972)

Severally read and, under Senate Rule 26, referred to the committee on Ethics and Rules.

Committee Discharged.

Mr. Panagiotakos, for the committee on Ways and Means, reported, asking to be discharged from further consideration of the Senate Bill providing for the continued medical care and treatment for Ellen E. Englehardt, a state trooper injured in the line of duty (Senate, No. 1142),-- **and recommending that the same be referred to the Senate committee on Ethics and Rules.**

Under Senate Rule 36, the report was considered forthwith and accepted.

PAPER FROM THE HOUSE.

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 the actions taken at the may 18, 2009, special town meeting held by the town of Lynnfield (House, No. 4474),-- **was referred, in concurrence, to the committee on Election Laws.**

Recess.

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

The President, members, guests and employees then recited the pledge of allegiance to the flag.

Resolutions.

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

Resolutions (filed by Mr. McGee) "congratulating Saint Mary of the Annunciation School in Melrose on its one hundredth anniversary"; and

Resolutions (filed by Mr. O'Leary) "congratulating Cape Cod & Islands Council, Inc., Boy Scouts of America, on the one hundredth anniversary of the Boy Scouts of America."

Communication.

The following communication, which was received in the Office of the Clerk of the Senate at twenty-five minutes before eleven o'clock A.M, on Thursday, February 4, 2010, was read and placed on file to wit:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1053

Dear Madame President:

I write to you today to resign my position as State Senator representing the Norfolk, Bristol and Middlesex District, effective immediately.

It has been one of the greatest honors of my life serving the people of my district in the General Court over the past 10 years as a State Representative and a State Senator. It has been a privilege to work with you and our Senate colleagues on so many important issues over the past several years, and I have learned a great deal from these experiences.

I look forward to continuing to work with the Massachusetts General Court and representing the people of Massachusetts as their Senator in Congress.

I respectfully request that a copy of this communication be printed in the Senate Journal.

Sincerely,
SCOTT BROWN
United States Senator-Elect

On motion of Mr. Knapik, the above communication was ordered printed in the Journal of the Senate.

Order Adopted.

Ms. Tisei offered the following order, to wit:

Ordered, That by the authority of article IV of section II of chapter I of the Constitution, the Senate declares that, by reason of the resignation of Scott P. Brown as senator from the Norfolk, Bristol and Middlesex district, the office of senator from the Norfolk, Bristol and Middlesex district is vacant as of February 4, 2010. By the authority of article XXIV of the Amendments to the Constitution, the Senate directs the president of the Senate to issue a precept setting forth May 11, 2010, as the day for holding an election to fill the vacancy in the Norfolk, Bristol and Middlesex district, comprising of precincts 2, 3 and 4, of the town of Franklin, precincts B, F and G of the town of Wellesley, and the towns of Millis, Needham, Norfolk, Plainville and Wrentham, all in the county of Norfolk; wards 1 and 2, and precinct A of ward 3 of the city of Attleboro and the town of North Attleborough, all in the county of Bristol; and precincts 6, 7, 9 and 10 of the town of Natick and the towns of Wayland and Sherborn, all in the county of Middlesex.

Under the rules, referred to the committee on Ethics and Rules.

Subsequently, Ms. Spilka, for the said committee, reported, recommending that the order ought to be adopted.

The rules were suspended, on motion of Mr. Mr. Richard T. Moore, and the order was considered forthwith and adopted.

PAPER FROM HOUSE
Emergency Preamble Adopted

An engrossed Bill establishing a sick leave bank for Tree Borden, an employee of the Norfolk District Attorney's Office (see House, No. 4400), 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 9 to 0. The bill was signed by the President and sent to the House for enactment.**

Orders of the Day.

The Orders of the Day were considered as follows:

Bills

Relative to the North Carver Water District (Senate, No. 2153); and
Prohibiting certain dumping in the city of Brockton (House, No. 4190)

Were severally read a second time and ordered to a third reading.

The Senate Bill relative to comprehensive siting reform for land based wind projects (Senate, No. 2245),-- **was considered, the main question being on passing the bill to be engrossed.**

The pending motion, previously moved by Mr. Knapik, to lay the matter on the table,— was considered; and it was negatived.

After remarks and pending the question on passing the bill to be engrossed, Mr. Downing moved that the bill be amended in section 9, in proposed section 69V by inserting after the word “but”, in line 197, the following word:- “only”; in section 9, in proposed section 69W, by striking out the words “, and if it does not, a listing of the standards for which the project does not comply and an explanation as to why compliance is not practicable”; in section 9, in proposed section 69W by striking out paragraphs (g) and (j); and, in section 5 in proposed chapter 40T in section 4 by striking out subsection (g).

After debate, the amendment was rejected by a vote of 4 to 8.

Mr. Downing moved that the bill be amended by inserting after section 9 the following 2 sections:-

“Section 9A. Section 7 of chapter 775 of the acts of 1975 is hereby amended by inserting after the word ‘property’, in line 4, the following words:- ‘within the geographical boundaries of its member cities and towns’.

Section 9B. Notwithstanding any general or special law to the contrary, section 9A shall not apply to any acquisition by eminent domain under section 7 of chapter 775 of the acts of 1975 so long as a notice of intent of taking has been filed on or before the effective date of this act at the appropriate registry of deeds.”

The amendment was *rejected*.

Mr. Downing moved that the bill be amended by striking out sections 3 and 4; by inserting after the word, “clerk”, in line 152, the following words:- “and this appeal shall be the exclusive means of review of such decisions of a wind energy permitting board”; and by inserting after the word, “agency”, in line 157, the following words:- “and this appeal shall be the exclusive means of review of such decisions of a regional planning agency”.

After remarks, the amendment was adopted.

Messrs. Brewer, Rosenberg and Downing moved that the bill be amended by inserting after the word “chapter”, in line 44, the following words:- or the municipality's planning board shall implement this chapter; and in line 45, by striking out the words “, or the municipality's planning board shall implement the provisions of this chapter”.

The amendment was adopted.

Mr. O'Leary moved that the bill be amended by inserting after the word “municipality”, in line 114, the following words:- “, other local governmental body or other local governmental bodies acting jointly on a regional basis whose applications have been approved by a host municipality's wind energy permitting board under this chapter,”; by inserting after the word “municipality”, in lines 117 and 118, each time it appears, the following words:- “, other local governmental body or other local governmental bodies acting jointly on a regional basis”; and by inserting after section 9 the following 3 sections:-

“SECTION 9A. Section 10 of chapter 25A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 22 and 23, the words, ‘or other local governmental body’ and inserting in place thereof the following words:- , other local governmental body or other local governmental bodies acting jointly on a regional basis.

SECTION 9B. Said section 10 of said chapter 25A, as so appearing, is hereby further amended by inserting after the word ‘municipality’, in lines 29, 42 and 43, each time it appears, the following words:- , other local governmental body or other local governmental bodies acting jointly on a regional basis.

SECTION 9C. Said section 10 of said chapter 25A, as so appearing, is hereby further amended by inserting after the word ‘locations’, in lines 27 and 28, the following words:- within the municipality, other local governmental body or other local governmental bodies acting jointly on a regional basis.”

The amendment was adopted.

Mr. Rosenberg moved that the bill be amended by inserting after section 11 the following section:-

“SECTION 11A. The department of energy resources shall notify each municipality with significant wind resource areas, as determined by the department, within 30 days of the effective date of this act of the terms and provisions of this act.”

The amendment was adopted.

Mr. Hedlund moved that the bill be amended in section 5 in proposed chapter 40T by striking out section 4e and inserting in place thereof the following section:

“Section 4e: The wind energy permitting board, in making its decision on the application, shall apply all applicable local by-laws and ordinances, and take into consideration the recommendations of the local boards and shall have the authority to assess fees to retain consultants under section 53G of chapter 44. The wind energy permitting board shall have the authority to waive zoning and nonzoning requirements of the municipality’s local laws, regulations, policies or other regulatory requirements. The wind energy permitting board may deny any application in which the proposed turbine would cast a shadow at any time on any residential property, nursing home, hospital, school or day care facility.”

After debate, the amendment was *rejected*.

Mr. Hedlund moved that the bill be amended in section 5 by striking out section 4e of proposed chapter 40T, and inserting in place thereof the following section:

“SECTION 4e: The wind energy permitting board, in making its decision on the application, shall apply all applicable local by-laws and ordinances, including any by-laws regulating construction in and around, and the disturbance of, wetlands and other environmentally sensitive areas, and shall take into consideration the recommendations of the local boards and shall have the authority to assess fees to retain consultants under section 53G of chapter 44. The board shall have the authority to waive zoning and nonzoning requirements of the municipality’s local laws, regulations, policies or other regulatory requirements.”

After remarks, the amendment was adopted,

Mr. Hedlund moved that the bill be amended by striking out, in line 215, the word “may” and inserting in place thereof the following word:- “shall”.

The amendment was adopted.

Mr. O’Leary moved that the bill be amended by inserting after the word “applicant”, in line 155, the following words:- “or by any other proponent of a wind energy facility.”

The amendment was adopted.

Mr. Panagiotakos moved that the bill be amended by striking out, in lines 380 to 386, inclusive, the words, “The energy facilities siting board shall issue an approval if it finds that the facility meets the standards set forth in subsection (g) of this section. Conditions recommended by state environmental agencies with respect to issues within their permitting authority under state law, by state environmental agencies with respect to biological resources identified under section 69V but not within their permitting authority under existing state law, or conditions recommended by host municipalities or their constituent boards, or regional planning agencies with regulatory authority, shall be adopted to the maximum extent practicable, and the board shall explain the reasons for not including any such conditions in its written decision.”.

The amendment was adopted.

Messrs. Tarr and Montigny moved that the bill be amended by striking out the first sentence of section 2 of proposed chapter 40T in Section 5 and inserting in place thereof the following 2 sentences:- “The department of energy resources, in consultation with the Massachusetts Municipal Association and applicable regional planning authorities, shall determine which municipalities in the commonwealth contain significant wind resource areas; provided, however, that the department shall promulgate through regulation criteria for such determination; provided, further, that prior to a final determination, the department shall hold a public hearing in the relevant municipality and offer a period for public comment. A municipality with significant wind resource areas shall establish a wind energy permitting board to conduct local permitting of a wind energy facility, within 30 days of receipt of a letter of intent from an applicant seeking to file an application under this chapter.”.

The amendment was adopted.

Ms. Spilka moved that the bill be amended by striking out section 5.

The amendment was *rejected*.

Messrs. Montigny, Tarr, Morrissey and Pacheco moved that the bill be amended by inserting after the word “Council”, in line 240, the following words:- “1 representative from the Metropolitan Area Planning Council; 1 representative of Southeastern Regional Planning and Economic Development District”; And by striking out, in lines 243-244 the words “; and up to 2 other representatives, appointed by the chairman, as the chairman of the board deems advisable”.

The amendment was adopted.

After debate, the bill (Senate, No. 2245, amended) was then passed to be engrossed. [For text of bill, printed as amended, see Senate, No. 2260].

Sent to the House for concurrence.

PAPERS FROM THE HOUSE

Engrossed Bills.

The following engrossed bills (the first two 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 President and laid before the Governor for his approbation, to wit:

Authorizing Berkshire Community College to lease certain land to the Pittsfield Young Men's Christian Association (see Senate, No. 2114, amended);

Relative to harassment prevention orders (see Senate, No. 2212, amended); and

Authorizing the town of Spencer to grant tax abatements to certain military personnel (see House, No. 1134).

Order Adopted.

On motion of Mr. Tarr,—

Ordered, That when the Senate adjourns today, it adjourn to meet again Monday 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 Former Lieutenant-Governor Sumner G. Whittier

Senators Tisei, Tarr, Knapik and Hedlund requested that when the Senate adjourns today, it adjourn in memory of former Lieutenant-Governor Sumner G. Whittier.

Sumner G. Whittier was born and raised in Everett, Massachusetts and graduated from Boston University in 1935. He began his political career as a local alderman and later served in the Massachusetts Legislature as a state representative and a state senator.

Mr. Whittier was elected lieutenant governor of Massachusetts in 1952, and served under Governor Christian Herter. Four years later, he ran for governor but lost to Democrat Foster Furcolo.

In 1957, President Dwight D. Eisenhower appointed Mr. Whittier to the Veterans Administration as the director of insurance programs. He was later promoted to agency administrator, a position he held until 1961. It was under Mr. Whittier's leadership that the Veterans Administration adopted as its motto the words from Abraham Lincoln's second inaugural address in 1865: "To care for him who shall have borne the battle and for his widow, and his orphan."

After leaving the Veterans Administration, Mr. Whittier headed west to work as the director of Michigan Medical Services, which later became Blue Shield. He also served as the director of the National Easter Seals Society and as director of the adult assistance planning office for Social Security before retiring at the age of 80.

Mr. Whittier died in a Maryland nursing home on January 8 at the age of 98. He is survived by his daughter Jayne of Gloucester; his twin daughters, Janis of Ellicott City, Maryland and Jill Kelly of Vancouver, Washington; his sister, Mona Jeane Somerville of Everett; several grandchildren; and a great-grandson.

He is survived by his loving wife Karen, mother Lucy, uncle Joseph, sisters Dena, Alicia and her husband Bruce, as well as brother-in-law John Fritz his wife Kathy, and his step-mother Maude.

Accordingly, as a mark of respect to the memory of former Lieutenant-Governor Sumner G. Whittier, at twenty-one minutes past three o'clock P.M., on motion of Mr. Tisei, the Senate adjourned to meet again on Monday next at eleven o'clock A.M.