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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, March 11, 2010.

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

Reports of Committees.

By Mr. Joyce, for the committee on State Administration and Regulatory Oversight, on the Reorganization Plan No. 2 of 2010 (submitted by the Governor under the provisions of Article LXXXVII of the Amendments to the Constitution) reorganization certain agencies of the executive department (see House, No. 4541) [for Majority Report, see Senate, No. 2318],— reported, in accordance with a provision of Joint Rule 23A,— **recommending that said Reorganization Plan No. 2 “ought to be approved”.**

Placed in the Orders of the Day for the next session, the question being “Shall this reorganization plan be approved?”.

By Ms. Candaras, for the committee on Children, Families and Persons with Disabilities, on Senate, No. 45 and House, No. 183, a Bill relative to level IV treatment interventions (Senate, No. 45);

By the same Senator, for the same committee, on Senate, No. 46 and House, No. 182, a Bill creating a special commission on behavior modification (Senate, No. 46, changed in line 22, by striking out the words “and Families,” and inserting in place thereof the words “, Families and Persons with Disabilities”); and

By Mr. O’Leary, for the committee on Education, on petition (accompanied by bill, Senate, No. 280), a Bill relative to Medicare reimbursement (Senate, No. 2317);

Severally referred, under Joint Rule 1E, to the committee on Health Care Financing.

By Mr. Morrissey, for the committee on Consumer Protection and Professional Licensure, on petition, a Bill relative to the registration of irrigation contractors (Senate, No. 107);

By Mr. O’Leary, for the committee on Education, on petition, a Bill relative to protecting the rights of custodial and other non teaching employees of school districts (Senate, No. 268);

By the same Senator, for the same committee, on petition, a Bill relative to studying alternative sources for funding local aid and state aid to public schools (Senate, No. 271, changed in lines 3 and 6, by inserting the words “elementary and secondary” before the word “education”; and in line 14, by striking out the words “Massachusetts Federation of Teachers” and inserting in place thereof the words “American Federation of Teachers Massachusetts”);

By Mr. Baddour, for the committee on Transportation, on petition, a Bill relative to motor vehicle registrations (Senate, No. 1921); and

By the same Senator, for the same committee, on Senate, Nos. 1924 and 1925, a Bill relative to ignition interlock devices (Senate, No. 1925);

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

By Ms. Baddour, for the committee on Transportation, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1908) of Cynthia Stone Creem for legislation to fund the Massachusetts Turnpike;

Referred, under Senate Rule 36, to the committee on Ethics and Rules.

Committee Discharged.

Mr. Montigny, for the committee on Bonding, Capital Expenditures and State Assets, reported, asking to be discharged from further consideration of the Senate Bill relative to the Max Ulin rink (Senate, No. 2310),-- **and recommending that the same be referred to the committee on Ways and Means.**

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

PAPERS FROM THE HOUSE.

Report of the committee on Environment, Natural Resources and Agriculture asking to be discharged from further consideration of the House petition (accompanied by bill, House, No. 728) of Barry R. Finegold, Frank I. Smizik and others for legislation to require that certain taxicabs be hybrid or alternative fuel vehicles,-- **and recommending that the same be referred to the committee on Telecommunications, Utilities and Energy,- was considered forthwith, under Senate Rule 36, and accepted, in concurrence.**

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 a half past one 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.

PAPERS FROM THE HOUSE

Engrossed Bills.

The following engrossed bills (all of which originated in the House), 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:

Relative to the sale of taxi licenses in the town of Brookline (see House, No. 3712);
Authorizing the use of revenues from the Groton Sewer Enterprise Fund (see House, No. 4354);
Amending the charter of the town of Groton (see House, No. 4355); and
Providing the voters of the town of Bridgewater a choice of charters for a new form of government (see House, No. 4547).

Reports of a Committee.

Mr. Berry, for the committee on Ethics and Rules, reported that the following matter be placed in the Orders of the Day for the next session:

The Senate Resolve establishing a commission to reduce unnecessary wait time for children with special health care needs to receive needed medical equipment such as wheelchairs and lifts (Senate, No. 800).

There being no objection, the rules were suspended, on motion of Mr. Buoniconti, and the resolve was read a second time. Pending the question on ordering the bill to a third reading, Mr. Buoniconti moved that the resolved be amended by substituting a new draft entitled "Resolve providing for an investigation and study by a special commission relative to reducing the wait time for medical equipment for children with special health care needs " (Senate, No. 2319).

The amendment was adopted.

The resolve (Senate, No. 2319) was then ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence

Mr. Berry, for the committee on Ethics and Rules, reported that the following matter be placed in the Orders of the Day for the next session:

The Senate Resolve reviving and continuing the special commission relative to the establishment of a Cranberry Heritage Area (Senate, No. 1876).

There being no objection, the rules were suspended, on motion of Mr. Pacheco, and the resolve was read a second time, ordered to a third reading, read a third time and passed to be engrossed. Sent to the House for concurrence.

Orders of the Day.

The Orders of the Day were considered, as follows:

The House Bill relative to school nutrition (House, No. 4459),-- **was read a third time.**

Ms. Fargo moved that the bill be amended in section 6, by inserting after proposed subsection (c) of proposed section 222 of chapter 111 of the General Laws the following subsection:-

(f) The department, in collaboration with the department of elementary and secondary education, shall promulgate regulations facilitating the establishment of school wellness advisory committees within school districts in order to maximize school districts' eligibility as recipients of federal grant awards. The regulations may require the wellness advisory committees to develop and recommend district-wide wellness policies addressing school nutrition, nutrition education and physical activity. The regulations may further require the wellness advisory committees to periodically review the district-wide wellness policies and implement any recommendations made as a result of this review prior to the following school year. Committee members may include school administrators, school nurses, food service directors, food service staff, parents of students in the school district, students, physical and health education teachers, dietitians, health care professionals and interested community members.

The amendment was adopted.

Messrs. Richard T. Moore , McGee and Montigny moved that the bill be amended in section 7, by inserting after the word "schools", in line 149, the following words:- " , including, but not limited to, physical education course offerings, class duration and frequency and the physical space and time allotted, if any, for public school students to participate in recess each week".; and , in section 7, by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) There is hereby established a commission on school nutrition and childhood obesity for the purpose of making an investigation and study of childhood obesity and effective programs promoting proper nutrition and exercise for the children of the commonwealth. The commission shall be co-chaired by the commissioner of public health and the commissioner of elementary and secondary education, or their designees, and shall include: the commissioner of mental health or the commissioner's designee; the commissioner of agricultural resources or the commissioner's designee; the chair of the statewide student advisory council or the chair's designee; 2 members appointed by the Massachusetts Association of School Superintendents; 1 member appointed by the Massachusetts Association of Secondary School Administrators; 1 member appointed by the Massachusetts nutrition board; 1 member appointed by the Massachusetts Association for Health, Physical Education, Recreation and Dance; 1 member appointed by the American Heart Association; 1 member appointed by the American Diabetes Association; 1 member appointed by the Massachusetts Parent Teacher Association; 1 member appointed by the Massachusetts Academy of Pediatrics; 1 member of the Massachusetts School Nutrition Association; 2 members appointed by the governor, 1 of whom shall be a representative of the food or beverage industry; 3 members appointed by the senate president and 3 members appointed by the speaker of the house of representatives. The members of the commission shall serve without compensation.

After remarks, the amendment was adopted.

Mr. Richard T. Moore moved that the bill be amended by adding the following section:-

"SECTION 11. The department of public health shall investigate the utility of developing and implementing pilot initiatives to reduce childhood obesity through school-based, behavioral and incentive-driven programs including, but not limited to, iMove and Planet Health. The department shall report on the findings of this investigation not later than 18 months after the effective date of this act."

After remarks, the amendment was adopted.

Ms. Fargo moved that the bill be amended in section 6, by inserting after proposed subsection (e) of proposed section 222 of chapter 111 of the General Laws the following subsection:-

"(f) To promote food safety, the department, in collaboration with the department of elementary and secondary education, shall promulgate regulations requiring local health officials to conduct food safety inspections at public schools, in accordance and with the frequency required by state and federal law, or as a result of public complaint or food recall, and to track and report the results of these inspections for each school to the department and the department of elementary and secondary education, including any violations and steps to remediate the violations. The regulations may include minimal qualifications for local health officials responsible with conducting food safety inspections at public schools. All reports and information collected or received by the departments pursuant to the requirements of this subsection shall be a public record subject to section 7 of chapter 4".

The amendment was adopted.

Messrs. Downing, Tarr and Montigny move to amend the bill by striking out section 9 and inserting in place thereof the following:-

"SECTION 9. (a) The department of agricultural resources shall collect data including, but not limited to:

(1) public school districts and other educational institutions currently purchasing locally-grown farm and locally-harvested fish products, as well as school districts or other educational institutions not yet preferentially purchasing locally grown farm or locally harvested fish products; (2) the type of farm or fish products public schools wish to purchase; (3) farms interested in selling locally-grown farm or locally-harvested fish products to public schools or other educational institutions; (4) the types of locally-grown farm and locally-harvested fish products available; and (5) the names and contact information of farmers, farm organizations, fishermen, or fish processors marketing the locally-grown farm products.

(b) The department of elementary and secondary education shall collect data including, but not limited to:

(1) the name of the procurement contact person at each public school district;

- (2) a list of public school districts that feature locally-grown or locally-harvested fish foods on their published cafeteria menus;
- (3) a list of public school districts that have school garden or greenhouse projects;
- (4) a list of public school districts that include local agriculture or fishing in their curricula; and
- (5) a list of public school districts that include serving locally-grown or locally-harvested foods in their wellness policies as a strategy to encourage healthy student meals.

(c) Based upon the data collected under subsections (a) and (b), the department of agricultural resources, in consultation with the department of elementary and secondary education, shall work with programs that facilitate the acquisition of local agricultural products or locally-harvested fish products by public schools, including the farm-to-school project developed by the department of agricultural resources, to develop a process by which farms or fish processors interested in selling to public schools may notify public schools and public schools interested in purchasing locally-grown farm or locally-harvested fish products may notify farms; provided, however, that the process ensures fair opportunities for all farms or fish processors interested in selling products to public schools in accordance with applicable laws and regulations.

(d) The department of agricultural resources, in consultation with the department of elementary and secondary education, shall file a report with the office of the governor, the speaker of the house of representatives, the president of the senate, the joint committee on education, the joint committee on public health and the joint committee on environment, natural resources and agriculture that details the results of the data collected under subsections (a) and (b) of this section, the steps taken to comply with subsection (c) and any recommendations, together with drafts of legislation necessary to carry out those recommendations, by March 1, 2011."

The amendment was adopted.

Mr. Panagiotakos moved that the bill be amended in section 3, by striking out, in line 20, the words "generally-accepted" and inserting in place thereof the following words:- "sound".

The amendment was adopted.

The question on passing the bill to be engrossed, in concurrence, with the amendments, was determined by a call of the yeas and nays, twenty-four minutes before three o'clock P.M., on motion of Mr. Richard T. Moore, as follows, to wit (*yeas 37 — nays 0*) [Yeas and Nays No. 199]:

INSERT ROLL CALL "199"

The yeas and nays having been completed at twenty minutes before three o'clock P.M., the bill was passed to be engrossed, in concurrence, with the above amendments and the amendment previously adopted by the Senate [For the text of the Senate amendment, printed as amended, see Senate, No. 2322].

Sent to the House for concurrence in the amendments.

The Senate Bill relative to bullying in schools (Senate, No. 2313),-- **was read a third time.**

After remarks, Messrs. O'Leary and Eldridge, Ms. Creem and Messrs. Brewer, Donnelly and Montigny moved that the bill be amended by adding the following section:-

"SECTION 8. The department of elementary and secondary education shall periodically review school district programs, activities and services to determine whether the school boards are in compliance with this act."

The amendment was adopted.

Messrs. Eldridge and O'Leary, Ms. Creem and Messrs. Donnelly and Montigny moved that the bill be amended in section 4, by inserting after the word "bullying" in line 96 the following words:- " , including information about specific categories of students who have been shown to be particularly at risk for bullying in the school environment".

The amendment was adopted.

Ms. Flanagan moved that the bill be amended by inserting after section 4 the following section:-

"SECTION 4A: The sixth paragraph of section 3 of chapter 71B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the third sentence the following sentence:- 'Whenever the evaluation indicates that a child requires an Individualized Education Program, this program may address the skills and proficiencies to avoid and respond to bullying, harassment or teasing.'"

After remarks, the amendment was adopted.

Mr. Tarr moved that the bill be amended, in section 4, by striking out the second paragraph of proposed subsection (b) of proposed section 37O of chapter 71 of the General Laws and inserting in place thereof the following paragraph:-

"Bullying is also prohibited both (i) at a location, activity, function or program that is not school-related and (ii) through the use of technology or an electronic device that is not owned, leased or used by a district or school if the act or acts in question (A) create a hostile environment at school for the victim, infringe on the rights of the victim at school, or materially and substantially disrupt the education process or the orderly operation of a school, or (B) are part of a pattern of conduct that occurs in part in a form subject to the first paragraph of this subsection."

Pending the question on adoption of the amendment, Messrs. Knapik and Montigny moved to amend the amendment (Tarr) by striking out the text in its entirety and inserting in place thereof the following text :--

“Section 4 is here hereby amended by striking out subsection (g) and inserting in place thereof the following:-

(g) A member of a school staff, including, but not limited to, an educator, administrator, school nurse, cafeteria worker, custodian, or paraprofessional, shall immediately report any instance of bullying or retaliation the staff member has witnessed or become aware of to the school principal or to the school official identified in the bullying prevention and intervention plan as responsible for receiving such reports or both. Upon receipt of such a report, the school principal or a designee shall: (i) notify the local law enforcement agency and the district attorney who shall determine if criminal charges should be pursued against the perpetrator; (ii) take appropriate disciplinary action; (iii) notify the parents or guardians of the perpetrator; and (iv) notify the parents or guardians of the victim, and to the extent consistent with state and federal law, notify them of the action taken to prevent any further acts of bullying or retaliation.”

After debate the further amendment (Knapik) was *rejected*.

The pending amendment (Tarr) was then considered; and it was *rejected*.

Mr. Tarr moved that the bill be amended in section 1, by inserting after the word “resolution”, in line 7, the following words:-
“including alternative dispute resolution”.

The amendment was *rejected*.

Mr. Tarr moved that the bill be amended in section 4, by inserting after the word “include”, in line 61, the following words:-
“notice and”.

The amendment was adopted.

Ms. Candaras and Messrs. Morrissey, Buoniconti, Tarr and Knapik moved that the bill be amended by inserting after section 5 the following 3 sections:-

“SECTION 5A. Section 43 of chapter 265 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$1,000, or imprisonment in the house of correction for not more than 2 and one-half years or both. Such conduct, acts or threats described in this subsection shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

SECTION 5B. Section 43A of said chapter 265, as so appearing, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than 2 and one-half years or by a fine of not more than \$1,000, or by both such fine and imprisonment. Such conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

SECTION 5C. Chapter 269 of the General Laws is hereby amended by striking out section 14A and inserting in place thereof the following section:-

Section 14A. Whoever telephones another person or contacts another person by electronic communication, or causes a person to be telephoned or contacted by electronic communication, repeatedly, for the sole purpose of harassing, annoying or molesting the person or the person’s family, whether or not conversation ensues, or whoever telephones or contacts a person repeatedly by electronic communication and uses indecent or obscene language to the person, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 3 months, or both.”; and by adding at the end thereof following section:-

“SECTION 8. There shall be a special commission for the purpose of making an investigation and study relative to bullying and cyber-bullying. The commission shall consist of 7 members: 1 of whom shall be the attorney general, or a designee, who shall chair the commission; 1 of whom shall be a representative of the Massachusetts District Attorneys Association; 1 of whom shall be a representative of the Massachusetts Chiefs of Police Association; 1 of whom shall be a representative of the Massachusetts Sheriffs’ Association; 1 of whom shall be a representative of the Massachusetts Association of School Committees; 1 of whom shall be a representative of the Massachusetts Association of School Superintendents; and 1 of whom shall be a representative of the Massachusetts Association of Secondary School Administrators. The commission shall review criminal laws to determine if they need to be amended in order to address bullying and cyber-bullying; provided further that the commission shall also investigate parental responsibility and liability for bullying and cyber-bullying. The commission shall also investigate and study the efficacy of including in the general laws specific categories or methods of bullying, specific classes of individuals for whom

anti-bullying policies should be in place, as well as the efficacy of putting in place a mandated report system for bullying similar to the system currently established in section 51A of chapter 119 of the General Laws. The commission shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry out such recommendations, by filing the same with the clerks of the senate and the house of representatives who shall forward the same to the chairs of the joint committee on education, the chairs of the joint committee on the judiciary, the chairs of the joint committee on public safety and homeland security, the chairs of the joint committee on children and families and the chairs of the house and senate committees on ways and means not later than January 1, 2011.”

After remarks, the amendment was adopted.

Mr. Tarr moved that the bill be amended in section 4, by striking out proposed subsection (i) of proposed section 370 of chapter 71 of the General Laws; and by adding after Section 7 the following section:-

“SECTION 8. Nothing in this act shall be construed to abridge the rights of students that are protected by the First Amendment to the Constitution of the United States or by Article LXXVII of the Constitution of the commonwealth.”

The amendment was *rejected*.

Mr. Panagiotakos moved that the bill be amended in section 4, by striking out, in lines 138 and 139, the words “for enforcement of this section against any public school, school district or the commonwealth”.

The amendment was adopted.

The question on passing the bill, as amended, to be engrossed was determined by a call of the yeas and nays, twenty-nine minutes before four o’clock P.M., on motion of Mr. O’Leary, as follows, to wit (*yeas 38 — nays 0*) [**Yeas and Nays No. 200**]:

INSERT ROLL CALL “200”

The yeas and nays having been completed at twenty-five minutes before four o’clock P.M., the bill was passed to be engrossed [For text of bill printed as amended, see Senate, No. 2323].

Sent to the House for concurrence.

Matters Taken Out of the Notice Section of the Calendar.

There being no objection, the following matters were taken out of the Notice Section of the Calendar and consider, as follows:

The Senate Bill relative to the Punchard Free School in the town of Andover (Senate, No. 2152),-- **was read a third time. Pending the question on passing the bill to be engrossed, Ms. Tucker moved that the bill be amended by substituting a new draft with the same title (Senate, No. 2321).**

The amendment was adopted.

The bill (Senate, No. 2321) was then passed to be engrossed.

Sent to the House for concurrence.

The House Bill relative to elections in the town of Wayland (House, No. 4256),-- **was read a third time and passed to be engrossed, in concurrence.**

The Senate Bill authorizing the town of Carver to divert funds from the Conservation Fund (Senate, No. 2095),-- **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill relative to payment for services rendered for extraordinary storm damage in the town of Templeton (Senate, No. 2231),-- **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

Order Adopted.

On motion of Mr. Pacheco,—

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

On motion of Ms. Menard, at twenty-three minutes before four o’clock P.M., the Senate adjourned to meet again on Monday next at eleven o’clock A.M.