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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Wednesday, May 27, 2009.

Met at one minute before two o'clock P.M.

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

Distinguished Guest.

There being no objection, the President handed the gavel to Messrs. Tolman, Petruccelli and Galluccio for the purpose of an introduction. Mr. Tolman then introduced Denise Simmons, the Mayor of Cambridge. Mayor Simmons is a former colleague of Mr. Galluccio and was sworn in as mayor on January 14, 2008. The Senate welcomed her with applause and she withdrew from the Chamber.

Communications.

Communications from the Honorable Richard R. Tisei, Senate Minority Leader, announcing the appointment of Senator Bruce E. Tarr to serve as his designee to the Special Commission established (pursuant to Chapter 7 of the Resolves of 2008) to make an investigation and study of economic opportunities in the Commonwealth and the appointment of Senator Scott P. Brown to serve as his designee to the Special Commission established (pursuant to Chapter 498 of the Acts of 2008) to make an investigation and study of the water quality of the Charles River,-- **were severally placed on file.**

Report of a Committee.

By Mr. Timilty, for the committee on Public Safety and Homeland Security, on petition, a Bill regulating the sport of mixed martial arts (Senate, No. 998, changed in section 5, by inserting after the word "physician," in line 48, the word "promoter"; and in section 5, by striking out the word "but" in line 112, and inserting in place thereof the word "however");
Read and, under Senate Rule 27, referred to the committee on Ways and Means.

Papers from the House

Of the committee on Children, Families and Persons with Disabilities, asking to be discharged from further consideration
Of the petition (accompanied by bill, Senate, No. 47) of Brian A. Joyce, John W. Scibak, Matthew C. Patrick, Tom Sannicandro and other members of the General Court for legislation relative to the licensure of applied behavior analysts,-- **and recommending that the same be referred to the committee on Consumer Protection and Professional Licensure;**
Of the petition (accompanied by bill, Senate, No. 41) of Anthony D. Galluccio, Karen E. Spilka, Thomas M. McGee, Susan C. Tucker and other members of the General Court for legislation relative to educational stability for foster children,-- and recommending that the same be referred to the committee on Education;
Of the petition (accompanied by bill, Senate, No. 54) of Thomas M. McGee, Danielle W. Gregoire, Martha M. Walz, John W. Scibak and other members of the General Court for legislation ensuring access to basic health care for children and young adults;
and

Of the petition (accompanied by bill, Senate, No. 56) of Joan M. Menard for legislation to promote healthy behavior;
And recommending that the same severally be referred to the committee on Public Health;

Of the committee on Elder Affairs, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 3416) of Ruth B. Balser and others for legislation to protect the interests and well being of residents in nursing homes, rest homes and long-term care facilities,-- **and recommending that the same be referred to the committee on Public Health;**

Of the committee on Municipalities and Regional Government, asking to be discharged from further consideration
Of the petition (accompanied by bill, Senate, No. 770) of Robert L. Hedlund, Bruce E. Tarr and James Cantwell for legislation relative to affordable housing built near wetlands;
Of the petition (accompanied by bill, Senate, No. 771) of Robert L. Hedlund, Bruce E. Tarr and James Cantwell for legislation relative to affordable housing use restrictions;
Of the petition (accompanied by bill, Senate, No. 772) of Robert L. Hedlund, James Cantwell and Bruce E. Tarr for legislation relative to affordable housing built in historic districts; and
Of the petition (accompanied by bill, Senate, No. 773) of Robert L. Hedlund, Bruce E. Tarr and James Cantwell for legislation relative to tracking affordable housing projects;
And recommending that the same severally be referred to the committee on Housing;
Were severally considered forthwith, under Senate Rule 36, and accepted, in concurrence.

Resolutions.

The following resolutions (having been filed with the Clerk) were considered forthwith and adopted, as follows:-
Resolutions (filed by Mr. Morrissey) "honoring Charles 'Charlie' A. Boyne's forty years of outstanding and dedicated service to the town of Braintree."

Orders of the Day.

The Orders of the Day were considered, as follows:

The Senate Bill authorizing the town of Charlton to grant an additional license for the sale of all alcoholic beverages to be drunk on the premises (Senate, No. 114),-- **was read a second time and ordered to a third reading.**

The Senate Bill mobilizing economic recovery in Massachusetts (Senate, No. 2047), -- **was read a second time.**
Pending the main question on ordering the bill to a third reading, after remarks,
Mr. McGee moved that the bill be amended by adding at the end thereof the following: --
"SECTION __. Notwithstanding the provisions of any general or special law to the contrary, every carrier offering continuation coverage under a health benefit plan issued under chapter 176J to any qualified beneficiary eligible for the COBRA premium assistance benefit set forth in section 3001 of the American Recovery and Reinvestment Act of 2009 shall offer the extended election period available therein to each qualified beneficiary who does not have an election of continuation coverage under a health benefit plan issued under chapter 176J in effect on the date of the enactment of this Act, but who would be an assistance eligible individual under the American Recovery and Reinvestment Act if such election were so in effect. Such a qualified beneficiary may elect such continuation coverage under chapter 176J during the period beginning on the enactment of this Act and ending 60 days after the date on which the notification required under this section is provided to such qualified beneficiary. Coverage elected in this extended election period commences with the first period of coverage beginning on or after the enactment of this Act. For purposes of this section, carriers or their designees under section 9(j)(5) of chapter 176J shall also comply with any applicable notice requirements under ARRA, except that such notice shall be made within 60 days after the enactment of this Act."

The amendment was adopted.

Mr. Montigny moved that the bill be amended by adding the following section at the end of the bill:-
"SECTION XX: "Notwithstanding any general or special law to the contrary, to further the Commonwealth's compliance with the transparency and accountability provisions of the American Recovery and Reinvestment Act of 2009, the comptroller shall transfer from the General Fund the amounts of enhanced federal Medicaid assistance percentage funds received from the federal government during fiscal years. 2010, and 2011 to the ARRA Medical Assistance Percentage Fund, which shall be established and set up on the books of the commonwealth. This fund shall be subject to appropriation for the purposes of maintaining services, preventing reductions and providing investments in health and human services programs under the Executive Office of Health and Human Services, including Commonwealth Care and the Health Safety Net programs. The fund shall expire June 30, 2011 at which time the comptroller shall transfer any remaining fund balance to the General Fund."
The amendment was *rejected*.

Mr. Montigny moved that the bill be amended by adding the following section at the end of the bill:-
"SECTION XX: "Notwithstanding any general or special law to the contrary, this bill shall expire on June 30, 2011."

The amendment was *rejected*.

Mr. Montigny moved that the bill be amended by adding the following section at the end of the bill:-

“SECTION XX: “There shall be a federal stimulus oversight commission that shall perform on-going review of federal stimulus spending in Massachusetts, whether such funding is in whole or in part for any particular project. The Commission shall coordinate with the Administration to ensure compliance with federal and state requirements on stimulus spending; and review current state laws, regulations and policies in order to make recommendations that will ensure accountability and transparency. The commission shall be comprised of the following members: the Senate and House chairmen of the Committees on Post Audit & Oversight, the Senate and House Chairmen of the Committees on Bonding, Capital Expenditures & State Assets, the auditor of the commonwealth, the inspector general of the commonwealth, and the commissioner of the division of capital assets management and maintenance. The commission shall be authorized to hold oversight hearings relative to programs of the commonwealth funded in whole or in part by the ARRA; provided further that the commission shall have the power to summon witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in connection with the programs authorized pursuant to this act and/or the ARRA. If the commission shall deem special studies or investigations to be necessary, they may undertake studies or investigations. Notwithstanding any general or special law to the contrary, neither the executive nor any agency, authority or other entity, involved in any manner with projects funded by or through the ARRA or this act, shall be exempt from the public records laws of the commonwealth.”

After debate, the amendment was *rejected*.

Mr. Morrissey moved to amend the bill in section 2, by striking out in line 12 the words “1 week” and inserting in place thereof the following: “2 weeks”;

In section 12, by striking out in line 152 the words “1 week” and inserting in place thereof the following: “2 weeks”;

In section 13, by striking out in line 160 the words “1 week” and inserting in place thereof the following: “2 weeks”;

In section 14, by striking out in line 173 the words “1 week” and inserting in place thereof the following: “2 weeks”;

In section 15, by striking out in line 186 the words “1 week” and inserting in place thereof the following: “2 weeks”;

In section 16, by striking out in line 194 the words “1 week” and inserting in place thereof the following: “2 weeks”;

In section 17, by striking out in line 200-201 the words “1 week” and inserting in place thereof the following: “2 weeks”;

In section 19, by striking out in line 330 the words “1 week” and inserting in place thereof the following: “2 weeks”;

In section 20, by striking out in line 406 the words “1 week” and inserting in place thereof the following: “2 weeks”; and

In section 21, by striking out in line 500 the words “1 week” and inserting in place thereof the following: “2 weeks”

The amendment was adopted.

Mr. Hedlund moved to amend the bill in section 23 by adding after the words “in this section” in line 570 the following text:- “In cases where the construction period exceeds the number of construction days as part of the bid’s time parameter by more than 5%, the contractor shall forfeit the project’s surety bond.”

The amendment was *rejected*.

Messrs. Pacheco and Montigny moved that the bill be amended by inserting after section____, the following new section:-

SECTION ____ . The secretary of administration and finance, in consultation with the Comptroller, shall submit a comprehensive bi-monthly report on the programs, aid, grants, and projects funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (ARRA). The report shall include, but is not limited to, the following:

1. An accounting of all known or anticipated federal funding from ARRA that will be available for use by any public entity in fiscal years 2009, 2010, and 2011. The report shall delineate federal funding that may be used to supplant or supplement general state appropriations in each fiscal year, with a further delineation between funding received as federal grants under section 6B of chapter 26 of the General Laws, funding received for public entities other than the state, and funding received that is subject to further appropriation by the Legislature.
2. An accounting of any funds collected or anticipated to be collected in fiscal years 2009, 2010, and 2011 pursuant to an increase in the federal Medicaid assistance percentage rate pursuant to ARRA and the assumptions used in any future projections.
3. A listing of all competitive federal grants available under ARRA for which a state agency has filed an application. The report shall state the number of applications that have been accepted, the number that are still pending, and the number that have been rejected, and shall the number of accepted applications with no less than 10 other states.
4. An accounting of the progress of all expenditures related to capital projects funded in whole or in part by ARRA. The report shall include, but not be limited to: the total amount allocated for each project, the total estimated cost of each project, the amount expended for the planning and design of each project up to the time the report is filed, the amount expended on construction of each project up to the time the report is filed, the total amount currently expended on each project, the estimated lifetime maintenance schedule and cost of each project, the original estimated completion date of each project, the current anticipated completion date of each project and, if the project has been de-authorized, the reason for and date of de-authorization.

The report shall be submitted bi-monthly for a period of 3 years after the effective date of this act and shall be posted publically and submitted to the clerks of the senate and house of representatives, the chairs of the joint committee on federal stimulus oversight, and the senate and house chairs of ways and means.

After remarks, the amendment was adopted.

Messrs. Pacheco and Montigny moved that the bill be amended by inserting after section _____, the following new section:-
“SECTION _____. The secretary of administration and finance or the applicable state agency applying for funds through the American Recovery and Reinvestment Act of 2009 shall file with the house and senate committees on ways and means and the joint committee on federal stimulus oversight copies of all state applications requesting funding concurrently with submission of the application to the Federal government. The secretary or the applicable state agency shall also inform the house and senate committees on ways and means and the joint committee on federal stimulus oversight in writing the amount of funds to be allocated and location of where funds are to be deposited as soon as notification from the Federal government on each award is received.”

The amendment was adopted.

Ms. Chang-Díaz moved to amend the bill in section 31, by striking out, in line 643, the words “\$1 million” and inserting in place thereof the following: - “\$10 million.”

The amendment was *rejected*.

Ms. Chang-Díaz moved to amend the bill by inserting after section 39 the following section:-

“SECTION 39A. Notwithstanding any general or special law to the contrary, the assistant secretary for access and opportunity is hereby authorized and directed to undertake a comprehensive study regarding the challenges and barriers faced by owners of small businesses, including owners of minority business enterprises and women business enterprises in accessing and obtaining working capital and debt financing. Said comprehensive study shall include, but not limited to, investigating the viability of implementing a short term loan program similar to that administered by the United States department of transportation’s office of small and disadvantaged business utilization. In undertaking the comprehensive study, the assistant secretary for access and opportunity shall consult the director of the office of small business and entrepreneurship, the director of the state office of minority and women business assistance and any other state agency or program whose mission is to assist small businesses, minority business enterprises and/or women business enterprises. Not later than 90 days after enactment of this section, said assistant secretary for access and opportunity shall prepare a written report indicating his findings, including recommendations and legislative language if appropriate. Said written report shall be provided to the Governor, the secretary of the executive office for administration and finance, and the chairs of the joint committee on community development and small business.”

The amendment was adopted.

Ms. Chang-Díaz moved to amend the bill by inserting after section 41 the following section:-

“SECTION 41A. a) Notwithstanding any general or special law to the contrary, the secretary of administration and finance shall promulgate regulations to monitor and enforce any contracting commitments related to minority business enterprises and women business enterprises made by contractors on projects using funds provided pursuant to American Recovery Reinvestment Act of 2009, and to monitor the workforce participation goals of 15.3% for minorities and 6.9% for women as proscribed in the executive office for administration and finance administrative bulletin #14.

b) Such regulations shall require that any entity that receives funds through the American Recovery and Reinvestment Act of 2009 shall provide written verification with every progress payment request submitted to the awarding authority detailing the portion of the payment that will be allocated to minority business enterprises and women business enterprises and progress toward the workforce participation goals in subsection (a); provided that any such entity must be deemed by the awarding authority to be in compliance with minority business enterprise and women business enterprise employment commitments, in order to receive any such payment.

c) The secretary of administration and finance shall require all contractors and subcontractors working on projects funded through the American Recovery and Reinvestment Act of 2009 to report the zip codes of residences of all employees working on such projects, while taking necessary steps to prevent the disclosure of individually-identifying information. Such reports shall be published with the verification required in subsection (b).

(d) For purposes of this section, the terms ‘minority business enterprise’ and ‘women business enterprise’ shall have the same meaning as found in section 40 of Chapter 23A of the General Laws.”

After remarks, the amendment was adopted.

Messrs. Pacheco, Hedlund and Montigny and Ms. Chang-Díaz moved that the bill be amended by inserting after section _____, the following new section:

“SECTION _____. Notwithstanding any general or special law to the contrary, the awarding authority, for projects which are funded in whole or in part by the American Recovery and Reinvestment Act of 2009, shall apply the following definition in place of that appearing in the fifth paragraph of subsection (1) of section 44A of chapter 149 of the General Laws:

‘Eligible’ means able to meet all requirements for bidders or offerors set forth in sections forty-four A through forty-four H of this chapter and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work. Provided further, that eligible shall not include any bidders or offerors that: 1.) have been debarred from bidding under section forty-four C of this chapter or any other applicable law; 2.) have been debarred by any

other state or by any agency of the United States; 3.) are otherwise excluded from public contracting or subcontracting for the reasons set forth under subsection c of section twenty-nine F of chapter twenty-nine; 4.) have been found guilty in state or federal court of any crime involving the Central Artery Ted Williams Tunnel construction project, 5.) that have paid money into the state's Central Artery/Tunnel Project Repair and Maintenance Trust Fund or 6.) have demonstrated consistently poor record of fulfillment on contracting commitments related to minority business enterprises and women business enterprises in past state funded projects as determined by the awarding authority. Notwithstanding any general or special law to the contrary, the Attorney General may waive or adjust the preceding requirements set forth above if he determines in writing that special circumstances exist which justify waiver or adjustment."

The amendment was adopted.

Mr. Hedlund moved to amend the bill in section 18 by striking out subsection a(1) and inserting in place the following text: "(a)(1) In inviting general bids and subbids the awarding authority shall reserve the right to reject any or all bids if the awarding authority determines that the subbidder is not a person competent to perform the work as specified, or if less than 3 subbids were received, which are not restricted to the use of 1 or more general bidders, and the prices are not reasonable for acceptance without further competition."

The amendment was *rejected*.

Ms. Spilka moved to amend the bill in section 31, by striking subsection (d) and inserting in place thereof the following: "(d) An awarding authority may adjust the requirements set forth in subsections (a), (b), (c) if the agency determines that, despite a good faith effort, and due to unavoidable circumstances, such as a demonstrated lack of apprentices in a geographic area, compliance with these requirements is not feasible or if application of the requirements would be preempted by federal law. If an awarding authority makes such a determination to adjust said requirements, said awarding authority shall notify the attorney general of its determination. The attorney general may reverse a decision of the awarding authority not to adjust said requirements if he determines that, despite a good faith effort, and due to unavoidable circumstances, such as a demonstrated lack of apprentices in a geographic area, compliance with these requirements is not feasible or if application of the requirements would be preempted by federal law. The attorney general shall have all the necessary powers to require compliance with the requirements of subsections (a), (b) and (c) therewith including the power to institute and prosecute proceedings in the superior court to restrain the award of contracts and the performance of contracts."

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at five minutes past four o'clock P.M., on motion of Mr. Tolman, as follows, to wit (*yeas 39 – nays 0*) [**Yeas and Nays No. 76**]:

INSERT ROLL CALL "[A]"

The yeas and nays having been completed at nine minutes past four o'clock P.M., the amendment was adopted.

After remarks, the bill as amended, was 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 mobilizing economic recovery in the Commonwealth" [For text of the bill, as amended, see Senate, No. 2061].

Sent to the House for concurrence.

Reports of Committees.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the petition of Frederick E. Berry for legislation to constitute a state university system..

Senate Rule 36 was suspended, on motion of Ms. Menard, and the report was considered forthwith. Joint Rule 12 was suspended, and the petition (accompanied by bill) was referred to the committee on Higher Education.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the petition of Steven A. Tolman for legislation to establish a sick leave bank for Edward Jedrey, an employee of the Department of Mental Health.

Senate Rule 36 was suspended, on motion of Ms. Menard, and the report was considered forthwith. Joint Rule 12 was suspended, and the petition (accompanied by bill) was referred to the committee on Public Service.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 7B be suspended on the petition of Robert A. O'Leary, Timothy Madden and Cleon H. Turner (by vote of the town) for legislation to establish the Nantucket community housing bank [Local approval received].

Senate Rule 36 was suspended, on motion of Ms. Menard, and the report was considered forthwith. Joint Rule 7B was suspended, and the petition (accompanied by bill) was referred to the committee on Revenue.

Severally sent to the House for concurrence.

Order Adopted.

On motion of Mr. Brewer,—

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

On motion of Mr. Pacheco, at twenty-one minutes past four o'clock P.M., the Senate adjourned to meet again tomorrow at eleven o'clock A.M.