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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, January 28, 2010.

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

Petition.

Mr. Pacheco presented a petition (accompanied by bill, Senate, No. 2255) of Marc R. Pacheco and Susan Williams Gifford (by vote of the town) for legislation to authorize a property tax exemption for certain small sheds and outbuildings in the town of Carver;

Under Senate Rule 20, to the committees on Revenue.

Reports of Committees.

By Ms. Jehlen, for the committee on Elder Affairs, on Senate, No. 319 and House, No. 534, a Bill relative to reserving beds in nursing homes during certain leaves of absence (Senate, No. 2256);

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

By Mr. McGee, for the committee on Public Service, on petition, a Bill establishing a sick leave bank for Gloria Oluboje, an employee of the Massachusetts Department of Transitional Assistance (Senate, No. 2254);

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

PAPERS FROM THE HOUSE.

A Bill authorizing the Town of Spencer to grant real and personal property tax abatements to members of the Massachusetts National Guard and Reservist Units called to active duty and serving in a foreign country. (House, No. 1134,-- on petition) [Local approval received],-- **was read and, under Senate Rule 26, placed in the Orders of the Day for the next session.**

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 nineteen minutes before three o'clock P.M., the Senate reassembled, the President in the Chair.

The President, members, guests and employees in the recitation of 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 Ms. Flanagan) "congratulating James Andrews on the occasion of his retirement";

Resolutions (filed by Ms. Jehlen) "commemorating the American Heart Association on its celebration of February as American Heart Month"; and

Resolutions (filed by Ms. Jehlen) "congratulating the Somerville Road Runners on their fifteenth anniversary."

Orders of the Day.

The Orders of the Day were considered, as follows:

The Senate Bill relative to comprehensive siting reform for land based wind projects (Senate, No. 2245),-- **was considered, the main question being on passing it 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 further remarks and pending the main question on passing the bill to be engrossed, Mr. Knapik moved that the bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.

The Senate Bill to regulate the use of off highway and recreation vehicles (Senate, No. 2251),-- **was considered, the main question being on passing it to be engrossed.**

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

Pending the question on passing the bill to be engrossed, Mr. Michael O. Moore moved that the bill be amended in Section 11, by striking out, in lines 190 to 193, inclusive, the words “that for recreation vehicles, the public way and the crossing shall be marked and approved for use by recreation vehicles by the applicable state or local authorities as part of a publicly or privately authorized recreation vehicle trail system and” and inserting in place thereof the following words:- “that for recreation vehicles, the public way and the crossing shall be marked and approved for use by recreation vehicles by the applicable state or local authorities as part of a publicly or privately authorized recreation vehicle trail system. The costs necessary to establish and maintain proper markings for said trail system shall be incurred by the applicable state or local authorities; provided, however, that these authorities shall be reimbursed from the Off Highway Vehicle Program Fund. Properly submitted additions to said trail system shall be deemed approved if not acted upon within 30 days of submission to the applicable state or local authority. Decisions to disapprove trail systems and trail system additions by state or local authorities may be appealed to the director of the office of environmental law enforcement.”; and by adding the following section:-

“SECTION 26. The applicable state or local authorities authorized to submit public ways and crossings for use by recreation vehicles as part of a publicly or privately authorized recreation vehicle trail system under section 25 of chapter 90B of the General Laws shall submit all existing public ways and crossings in use by recreation vehicles as part of any publicly or privately authorized recreation vehicle trail systems not less than 30 days after the effective date of this act.”

After remarks, the amendment was adopted.

Mr. Michael O. Moore moved that the bill be amended by inserting after Section 18 the following section:-

“SECTION 18A. The definition of ‘Police chief’ in section 1 of chapter 90C of the General Laws, as appearing in section 86 of chapter 35 of the acts of 2009, is hereby amended by inserting after the words “the chairman of the Massachusetts Department of Transportation,” the following words:- , or the director of environmental law enforcement within the executive office of energy and environmental affairs.”

The amendment was adopted.

Mr. Baddour moved that the bill be amended in section 7, by striking out the proposed first paragraph of section 22 of chapter 90B of the General Laws, and inserting in place thereof the following paragraph:-

“No person shall operate a snow vehicle or a recreation vehicle unless the vehicle has been registered in accordance with this chapter and a registration number assigned by the director is displayed on the vehicle. A motor vehicle license or learner’s permit shall not be required for the operation of a snow vehicle or a recreation vehicle; provided, however, that a person between 14 and 16 years of age shall not operate an all terrain vehicle or recreation utility vehicle with an engine capacity greater than 90 cubic centimeters; provided, further, that a person between 14 and 16 years of age may operate an all terrain vehicle or recreation utility vehicle with an engine capacity equal to or less than 90 cubic centimeters if directly supervised by an adult 18 years of age or older as provided under section 25C.”;

In section 13, by striking out the proposed section 25B of said chapter 90B, and inserting in place thereof the following section:-

“Section 25B. No person under 14 years of age shall operate an all terrain vehicle or recreation utility vehicle. This section shall not apply to a person operating a recreation vehicle or snow vehicle in preparation for, or while a participant in, a sanctioned race, rally or organized event which is supervised by a person aged 18 or older and which has been authorized or approved by a municipal permitting authority. It shall be an affirmative defense in a delinquency proceeding for a violation of this section that a juvenile was supervised by a person aged 18 or older while operating such a vehicle within 21 days before such sanctioned race, rally or organized event or while a participant in such a sanctioned race, rally or organized event.”;

In said section 13, by striking out the proposed section 25J of said chapter 90B;

In section 14, by striking out, in line 305, the word “and” and inserting in place thereof the following word:- “or”;

In said section 14, by striking out, in lines 317 and 320, the figure “26E” and inserting in place thereof, in each instance, the following figure:- “26D”; and

In said section 14, by striking out, in lines 395 and 396, the words “of section 25 or”.

The amendment was adopted.

Messrs. Richard T. Moore and Brewer moved that the bill be amended in section 9, by inserting after the word “adopt.”, in line 173, the following sentence:- “A snowmobile that was manufactured prior to January 28, 1985 and that is substantially maintained in its original or restored condition shall meet the sound and emission specifications in place at the time of its manufacture.”

After remarks, the amendment was adopted.

Messrs. Richard T. Moore and Brewer moved that the bill be amended in section 9, by striking out, in line 176, the figure “\$50” and inserting in place thereof the following figure:- “\$250”.

After remarks, the amendment was adopted.

Mr. Richard T. Moore moved that the bill be amended in section 3, by inserting after the word “protection”, in line 79, the following words:- “; provided, however, that said departments shall annually report to the house and senate committees on ways and means and the joint committees on environment, natural resources and agriculture, transportation and public safety and homeland security relative to the source and amount of funds deposited and the purpose and recipient of expenditures from the fund”.

After remarks, the amendment was adopted.

Messrs. Richard T. Moore, Brewer and Knapik moved that the bill be amended in section 12, by striking out the proposed sections 25B, 25C and 25D of chapter 90B of the General Laws and inserting in place thereof the following section:-

“Section 25B. (a) No person under 10 years of age shall operate an all terrain vehicle or recreation utility vehicle.

(b) No person between the age of 10 years and 14 years shall operate an all terrain vehicle or recreation utility vehicle with an engine capacity greater than 70 cubic centimeters unless under the direct supervision of a person aged 18 or older. For the purposes of this section, ‘direct supervision’ shall mean that the supervising adult shall be sufficiently close to an operator at all times that the vehicle is in operation, such that a reasonable person under the totality of the circumstances including, but not limited to, vehicle and ambient noise, the landscape, topography and geography of the location, and the operator’s wearing of protective headgear, would reasonably believe that he is maintaining visual contact and verbal communication with the operator.

(c) No person between the age of 14 years and 16 years shall operate an all terrain vehicle or recreation utility vehicle with an engine capacity greater than 90 cubic centimeters unless under the direct supervision of an adult 18 years of age or older. For the purposes of this section, ‘direct supervision’ shall mean that the supervising adult shall be sufficiently close to an operator at all times that the vehicle is in operation, such that a reasonable person under the totality of the circumstances including, but not limited to, vehicle and ambient noise, the landscape, topography and geography of the location, and the operator’s wearing of protective headgear, would reasonably believe that he is maintaining visual contact and verbal communication with the operator.”

After debate, the amendment was *rejected*.

Mr. Rosenberg in the Chair, Mr. Richard T. Moore doubted the vote, and asked for a standing vote; and the amendment was rejected by a vote of 5 to 9..

Mr. Panagiotakos moved that the bill be amended in section 3, in the proposed section 18C of chapter 21A of the General Laws, by striking out subsection (a) and inserting in place thereof the following subsection:-

“(a) There shall be established and set up on the books of the commonwealth an Off Highway Vehicle Program Fund.

Notwithstanding the provisions relative to the distribution of fines, penalties and forfeitures in section 10G of chapter 21 to the contrary, there shall be credited to the fund all of the fees collected pursuant to section 22 of chapter 90B, 75 per cent of all fines, costs, forfeitures, expenses and interest imposed pursuant to section 21 and sections 24 to 32, inclusive, of said chapter 90B and pursuant to the fourth paragraph of section 10H of chapter 21A, any revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund, any appropriation or grant explicitly made to the fund and any income derived from the investment of amounts credited to the fund. The remaining 25 per cent of the fines, costs, forfeitures, expenses and interest imposed pursuant to said section 21 and said sections 24 to 32, inclusive of said chapter 90B and pursuant to the fourth paragraph of section 10H of chapter 21A shall be distributed equally among the division, departments or offices involved or to the division, department or office if a single law enforcement agency was involved.” and

In section 17, by striking out the proposed section 34 of chapter 90B of the General Laws, and inserting in place thereof the following section:-

“Section 34. Notwithstanding the provisions relative to the distribution of fines, penalties and forfeitures in section 10G of chapter 21 to the contrary, of the fines collected by the commonwealth pursuant to a violation of the fourth paragraph of section 10H of chapter 21A and section 21 and 24 to 32, inclusive, 75 per cent shall be deposited into the Off Highway Vehicle Program Fund, established in section 18C of said chapter 21A, and the remaining 25 per cent shall be distributed equally among the divisions, departments or offices involved in the enforcement of the laws which resulted in the assessment of such fines.”

The amendment was adopted.

Messrs. Brewer and Richard T. Moore moved that the bill be amended in section 3, by inserting after the word “fund.”, in line 62, the following sentence:- “A minimum of 25 per cent of the Off Highway Vehicle Program Fund shall be expended for trail land acquisition and maintenance.”; and in said section 3, by

by inserting after the word “vehicles”, in line 72, the following words:- “and snow vehicles”.

The amendment was *rejected*.

The bill (Senate, No. 2251, amended) was then passed to be engrossed.[For text of bill, printed as amended, see Senate, No. 2257].

Sent to the House for concurrence.

Matter Taken Out of the Notice Section of the Calendar.

There being no objection, the following matter was taken out of the Notice Section of the Calendar and considered, as follows:- The House Bill relative to unpaid municipal fines (House, No. 3588, amended),-- was read a second time, and was amended, as recommended by the committee on Ethics and Rules striking out section 8A of proposed Chapter 40U (as inserted by amendment by the House).

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 relative to the collection of unpaid municipal fines".

Sent to the House for concurrence in the amendment.

PAPER FROM THE HOUSE.

The Senate Bill relative to vocational education (Senate, No. 253, amended),-- **came from the House passed to be engrossed, in concurrence with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4406.**

Senate Rule 36 was suspended, on motion of Mr. Montigny, and the House amendment was considered forthwith.

Messrs. Morrissey and Montigny moved that the Senate concur with the House amendment with a further amendment striking out all after the enacting clause and inserting in place thereof the following next text:

"The commissioner of elementary and secondary education may approve the establishment of 2 pilot vocational-technical education programs in criminal justice, 1 of which shall be by the Greater New Bedford Regional Vocational Technical High School and 1 of which shall be by Quincy High School. The purpose of the pilot programs shall be to determine the feasibility and cost of establishing criminal justice as a vocational-technical education program under chapter 74 of the General Laws. Students enrolled in the pilot programs shall be considered to be enrolled in an approved vocational-technical education program for all purposes; provided, however, that those students shall not be included within the definition of vocational enrollment in section 2 of chapter 70 of the General Laws for funding purposes. The qualifications of the teachers shall be subject to approval by the commissioner. The department of elementary and secondary education shall report its recommendations regarding the feasibility and costs of establishing criminal justice as a vocational-technical education program under chapter 74 of the General Laws to the general court by June 30, 2013."

The further amendment was adopted.

The Senate then concurred in the House amendment, as amended.

Sent to the House for concurrence in the further amendment.

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 House Bill naming a certain bridge in the city of Malden (House, No. 3210).

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.

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 Bill relative to the modernization of optometric patient care (Senate, No. 1756).

There being no objection, the rules were suspended, on motion of Mr. Richard T. Moore, and the bill was read a second time and ordered to a third reading.

PAPERS FROM THE HOUSE.

A petition (accompanied by bill) of Jennifer E. Benson, Ellen Story and others relative to establishing a public health Lyme disease research institute at the University of Massachusetts Medical School.,-- came from the House with the endorsement that the House had NON-concurred in the Senate reference to the committee on Higher Education and insisted on its reference to the committee on the Public Health.

On motion of Mr. Michael O. Moore, the Senate again NON-concurred in the reference to the committee on Public Health and again referred the petition to the committee on Higher Education.

Sent to the House for its action.

A petition (accompanied by bill, House, No. 4453) of Anne M. Gobi for legislation to establish a sick leave bank for Denise Goodreau, an employee of the Department of Mental Retardation,-- **was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Public Service.**

Engrossed Bill.

An engrossed Bill relative to the Board of Public Accountancy and regulating the registration of certified public accountants (see House, No. 4159, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and signed by the Acting President (Mr. Rosenberg) (having been appointed by the President, under the provisions of Senate Rule 4, to perform the duties of the Chair) and laid before the Governor for his approbation.

Order Adopted.

On motion of Mr. Tisei,—

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

Moment of Silence.

At the request of the Chair (Mr. Rosenberg) the members, guests and employees stood in a moment of silence and reflection to the memory of Enes (Leccacorvi) Donnelly.

Adjournment in Memory of Enes (Leccacorvi) Donnelly

The Senator from Middlesex, Mr. Donnelly, requested that when the Senate adjourns today, it adjourn in memory of Enes (Leccacorvi) Donnelly of Woburn.

Enes Donnelly died at home on January 16, 2010 surrounded by her loving family. Enes was the beloved wife of Albert Donnelly and mother of Senator Ken Donnelly and his brothers, Albert, Stephen, Paul, John, and Russell. She is survived by 15 grandchildren, 4 great grandchildren, and many nieces and nephews all who will miss her dearly. Enes devoted her life to her husband, children and grandchildren. She was the rock of her family, an adoring grandmother and exceptional cook. She was known by all for her strength of character, her guiding hand, and her unconditional love for her family and dear friends.

Accordingly, as a mark of respect to the memory of Enes (Leccacorvi) Donnelly, at thirteen minutes past three o'clock P.M., on motion of Mr. Tarr, the Senate adjourned to meet again on Monday next at eleven o'clock A.M.