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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Tuesday, March 31, 2009.

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

Distinguished Guests.

There being no objection, the President handed the gavel to Mr. Joyce for the purpose of an introduction. Mr. Joyce then introduced a delegation of Chinese student government presidents, representatives and leaders from the All-China Students' Federation. The group is visiting the United States as part of an exchange program sponsored by the Ivy Council, a student government body established in 1993 consisting of government leaders from colleges and universities of the Ivy League. They were led by Mr. Chen Peng, a friend of Mr. Joyce.

Communication.

A communication from the Honorable Therese Murray, President of the Senate, announcing the appointment of Senators Thomas M. McGee and Kenneth J. Donnelly to the Special Commission established (pursuant to Section 111 of Chapter 182 of the Acts of 2008) to study the Massachusetts Contributory Retirement Systems (Senator McGee replaced Senator Frederick E. Berry, who was previously appointed, and Senator Donnelly replaced Senator Panagiotakos, who was previously appointed),— **was placed on file.**

PAPERS FROM THE HOUSE.

A Bill establishing a sick leave bank for a certain employee of the Department of Conservation and Recreation (House, No. 2579,— on petition),— **was read and, under Senate Rule 27, referred to the committee on Ways and Means.**

A Bill authorizing the city of Beverly to issue additional liquor licenses to Joseph A. Leone, D/B/A The Black Cow restaurant, and to the American BBQ LLC D/B/A The American BBQ (House, No. 3795,— 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 eight minutes before three 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.

A petition (accompanied by bill, House, No. 4042) of Kevin G. Honan relative to the use of housing stabilization and investment trust funds for the soft second mortgage program, so-called,— **was referred, in concurrence, to the committee on Housing.**

Orders of the Day.

The Orders of the Day were considered, as follows:

The engrossed Bill extending the Commonwealth's authority to guarantee obligations of the Massachusetts Turnpike Authority (see House Bill, printed in House, No. 100, amended) (which originated in the House),— **was considered, the main question being on passing the bill to be enacted.**

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

After remarks, Mr. Montigny moved that the engrossed 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.

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 considered as follows:—

The House Bill relative to the town clerk of the town of Weston (House, No. 3472),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The Senate Committee Bill providing responsible reforms in the pension system (Senate, No. 2025),— **was read a second time.** Pending the question on ordering the committee bill to a third reading, Messrs. Tisei, Tarr, Knapik, Hedlund and Brown moved that the bill be amended in section 8 by adding after the words "including minimum compensation limits for officials to be eligible for credit for service" the words:— "; 8) Potential savings and benefits from moving to a contributory retirement system for new employees, including a system that maintains eligibility for employees to participate in the social security system."

After debate the amendment was rejected.

Messrs. Tisei, Tarr, Knapik, Hedlund, Brown and Montigny moved that the committee bill be amended by inserting after Section 8, adding the following section:—

"SECTION 8A. Paragraph (e) of subsection 2A of section 23 of chapter 32, as appearing in the 2006 Official Edition, is hereby amended by adding the following clause:—

"(xv) not award any compensation package that includes incentive payments for performance in any year in which the total value of the fund is reduced from the total value thereof in the preceding year."

After remarks, the amendment was adopted.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the committee bill be amended by inserting at the end thereof the following new section:—

"SECTION 11. Section 1 of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting following the definition of the words "Annuity savings fund" the following:—

"Average annual rate of regular compensation", shall be the average of the rate of regular compensation for any qualifying year of credible service received during each pay period during the qualifying year."

The amendment was rejected.

Messrs. Hedlund, Tarr, Brown, Tisei and Knapik moved that the committee bill be amended by inserting at the end thereof the following new section:—

"SECTION 11. Paragraph (a) of subdivision (2) of section 5 of chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following 2 sentences:—

When determining the percentage to compute a member's retirement allowance, the percentage in the following table shall be prorated for a member whose service has been in positions classified in 2 or more of Group 1, Group 2 or Group 4. The percentage shall be determined for each of Group 1, Group 2 and Group 4 in which any employee's past position was designated, and that percentage shall be multiplied by the member's years of service in each Group respectively and added together before multiplying the percentage by the member's average rate of compensation for his determined 3 years."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays at twenty-six minutes past four o'clock P.M., on motion of Mr. Hedlund, as follows, to wit (yeas 6 — nays 32) [Yeas and Nays No. 24]:

YEAS.

Brown, Scott P. Knapik, Michael R.
Hedlund, Robert L.. Tarr, Bruce E.
Joyce, Brian A. Tisei, Richard R. — 6.

NAYS.

Baddour, Steven A. Kennedy, Thomas P.
Berry, Frederick E. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
Buoniconti, Stephen J. Montigny, Mark C.

Candaras, Gale D. Moore, Michael O.
Chandler, Harriette L. Moore, Richard T.
Chang-Diaz, Sonia Morrissey, Michael W.
Creem, Cynthia Stone Pacheco, Marc R.
Donnelly, Kenneth J. Panagiotakos, Steven C.
Downing, Benjamin B. Petruccelli, Anthony
Eldridge, James B. Rosenberg, Stanley C.
Fargo, Susan C. Spilka, Karen E.
Flanagan, Jennifer L. Timilty, James E.
Galluccio, Anthony D. Tolman, Steven A.
Hart, John A., Jr. Tucker, Susan C.
Jehlen, Patricia D. Walsh, Marian — 32.
ANSWERED “PRESENT”.
O’Leary, Robert A. — 1.

The yeas and nays having been completed at twenty-nine minutes past four o’clock P.M., the amendment was rejected.

Messrs. Hedlund, Tarr, Brown, Tisei, Knapik and Montigny moved that the committee bill be amended by inserting at the end thereof the following new section:—

“SECTION 11. Subdivision (2) of section 5 of chapter 32, of the General Laws, as so appearing, is hereby amended at the end thereof by adding the following sentences:— Provided that in any given year, no retirement allowance, as provided for by this chapter, shall exceed four hundred per cent of the average retirement allowance in the Commonwealth. The board shall determine the average retirement allowance in the Commonwealth as of January 1 of each year.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays at a quarter before five o’clock P.M., on motion of Mr. Tisei as follows, to wit (yeas 11 — nays 27) [Yeas and Nays No. 25]:

YEAS.

Baddour, Steven A. O’Leary, Robert A.
Brown, Scott P. Tarr, Bruce E.
Hedlund, Robert L. Timilty, James E.
Joyce, Brian A. Tisei, Richard R.
Knapik, Michael R. Tucker, Susan C. — 11.
Montigny, Mark C.

NAYS.

Berry, Frederick E. Jehlen, Patricia D.
Brewer, Stephen M. Kennedy, Thomas P.
Buoniconti, Stephen J. McGee, Thomas M.
Candaras, Gale D. Menard, Joan M.
Chandler, Harriette L. Moore, Michael O.
Chang-Diaz, Sonia Moore, Richard T.
Creem, Cynthia Stone Morrissey, Michael W.
Donnelly, Kenneth J. Pacheco, Marc R.
Downing, Benjamin B. Panagiotakos, Steven C.
Eldridge, James B. Petruccelli, Anthony
Fargo, Susan C. Rosenberg, Stanley C.
Flanagan, Jennifer L. Spilka, Karen E.
Galluccio, Anthony D. Tolman, Steven A. — 27.
Hart, John A., Jr.

ANSWERED “PRESENT”.

Walsh, Marian — 1.

The yeas and nays having been completed at twelve minutes before five o’clock P.M., the amendment was rejected.

Messrs. Hedlund, Tarr, Brown, Tisei, Knapik and Montigny moved that the committee bill be amended by inserting at the end thereof the following new section:—

“SECTION 11. Chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 22D the following new section:—

Section 22E. (1) Notwithstanding the provisions of any general or special law to the contrary upon the passage of any legislation making changes to any general or special law that affects the commonwealth’s pension liability, as defined in section 1, that changes the benefits or contributions of classes of members, including but not limited to early retirement incentive programs, a pension impact statement shall be filed not later than 30 days after such adoption. The pension impact statement shall be prepared or approved by the actuary of the public employee retirement administration commission and shall analyze, study, and evaluate the costs and the actuarial liabilities attributable to the change. The actuary shall also file the pension impact statement with each system to which any portion of the change in liability is attributable and shall send a copy thereof to the secretary for

administration and finance and the house and senate committees on ways and means. The actuary may subsequently revise the estimates in a pension impact certificate and revise the required contribution schedule it requires accordingly. After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays at nine minutes before five o'clock P.M., on motion of Mr. Panagiotakos, as follows, to wit (yeas 39 — nays 0) [Yeas and Nays No. 26]:

YEAS.

Baddour, Steven A. Knapik, Michael R.
Berry, Frederick E. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
Brown, Scott P. Montigny, Mark C.
Buoniconti, Stephen J. Moore, Michael O.
Candaras, Gale D. Moore, Richard T.
Chandler, Harriette L. Morrissey, Michael W.
Chang-Diaz, Sonia O'Leary, Robert A.
Creem, Cynthia Stone Pacheco, Marc R.
Donnelly, Kenneth J. Panagiotakos, Steven C.
Downing, Benjamin B. Petrucelli, Anthony
Eldridge, James B. Rosenberg, Stanley C.
Fargo, Susan C. Spilka, Karen E.
Flanagan, Jennifer L. Tarr, Bruce E.
Galluccio, Anthony D. Timilty, James E.
Hart, John A., Jr. Tisci, Richard R.
Hedlund, Robert L. Tolman, Steven A.
Jehlen, Patricia D. Tucker, Susan C.
Joyce, Brian A. Walsh, Marian — 39.
Kennedy, Thomas P.

NAYS — 0.

The yeas and nays having been completed at seven minutes before five o'clock P.M., the amendment was adopted. Ms. Creem moved that the committee bill be amended by striking section 6, 7 and 8 and inserting in place thereof the following:—

“Section 10 of chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking it in its entirety and inserting in place thereof the following:—

Section 10. (1) (a) Any member classified in Group 1, Group 2 or Group 4, who has completed six or more years of creditable service, and who fails of nomination or re-election, or fails to become a candidate for nomination, re-election or election, or fails of reappointment, or is removed or discharged from his office or position without moral turpitude on his part, or accepts during, or prior to the expiration of a term for which he was elected appointment to an office or position the acceptance of which requires under the constitution of the commonwealth resignation from the general court, or any such member whose office or position is abolished, who leaves his accumulated total deductions in the annuity savings fund of the system of which he is a member, shall have the right upon attaining age fifty-five, or at any time thereafter, to apply for a termination retirement allowance to become effective as provided for in subdivision (2) of this section. Such allowance shall be determined in accordance with the provisions of section five, or the provisions of any other section governing superannuation retirement applicable to such member upon the basis of such member's age on the date when the retirement allowance becomes effective, with an amount of creditable service equal to that with which he was credited on the date of his termination of service.

(b) Any member classified in Group 1, Group 2 or Group 4, who has completed ten or more years of creditable service, and who resigns or voluntarily terminates his service and leaves his accumulated total deductions in the annuity savings fund of the system of which he is a member, shall have the right upon attaining age fifty-five, or at any time thereafter, to apply for a termination retirement allowance to become effective as provided for in subdivision (2) of this section. Such allowance shall be determined in accordance with the provisions of section five or the provisions of any other section governing superannuation retirement applicable to such member upon the basis of such member's age on the date when the retirement allowance becomes effective, with an amount of creditable service equal to that with which he was credited on the date of his termination of service.

(c) Any member who is removed or discharged for violation of the laws, rules and regulations applicable to his office or position, or any member whose removal or discharge was brought about by collusion or conspiracy, shall not be entitled to the retirement allowance provided for in this subdivision.

(2) Right to Defer Receipt of Allowance. — The retirement allowance of any member entitled thereto under the provisions of subdivision (1) of this section shall become effective on the date of his termination of service if his written application therefor is filed with the board not more than sixty days after such date; otherwise his retirement allowance shall be deferred. Any such member may, at any time thereafter and before attaining the maximum age for his group, file with the board his written application for such retirement allowance, and thereupon such retirement allowance shall become effective on the date which shall be specified in such application and which shall be not less than fifteen days nor more than four months after the filing of such application but in no event later than the maximum age for his group. The retirement allowance of any such member who

fails to file a written application therefor as provided for in this subdivision shall nevertheless become effective upon his attainment of the maximum age for his group unless prior to such age his accumulated total deductions have been returned as provided for in this section and in section eleven. Payments under such allowance shall be made as provided for in sections twelve and thirteen. The amount of such retirement allowance shall be based upon such member's creditable service only for the period prior to the actual date of his termination of service; provided, that if such member later becomes reinstated, re-employed or re-elected and restored to active membership in accordance with the provisions of section three, the amount of his retirement allowance shall also include credit for any subsequent period of his creditable service.

(3) Right to a Return of Accumulated Total Deductions. — Any retirement allowance granted to a member in accordance with the provisions of sections one to twenty-eight inclusive, except as otherwise provided for in subdivision (3) of section twenty-five, shall be in lieu of the payment to him of his accumulated total deductions. Any member not entitled to a retirement allowance in accordance with the provisions of sections one to twenty-eight inclusive, or any member entitled to a retirement allowance as provided for in this section whose allowance has not become effective, shall be paid the amount of his accumulated total deductions as provided for in subdivision (1) of section eleven upon his written request therefor on a prescribed form filed with the board on or after the date of his termination of service, except as provided for in section 11 or section fifteen.”

The amendment was rejected.

Messrs. Tisei, Tarr, Knapik, Hedlund, Brown and Montigny moved that the committee bill be amended by inserting after Section 6 the following section:—

“SECTION 6A. Said paragraph (1) of said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 5 to 7, inclusive, the words, “or whose office or position is abolished, or is removed or discharged from his office or position without moral turpitude on his part”; and by inserting after Section 7 the following section:—

“SECTION 7A. Said paragraph (1) of said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 11 and 12, the words “, or any such member whose office or position has been abolished, or is removed or discharged from his office or position without moral turpitude on his part”; and by inserting after Section 8 the following section:—

“SECTION 8A. Said paragraph (1) of said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 51 to 53, inclusive, the words “, or whose office or position is abolished, or is removed or discharged from his office or position without moral turpitude on his part.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays at eight minutes past five o'clock P.M., on motion of Mr. Tisei as follows, to wit (yeas 15 — nays 23) [Yeas and Nays No. 27]:

YEAS.

Baddour, Steven A. Morrissey, Michael W.
Brown, Scott P. O'Leary, Robert A.
Creem, Cynthia Stone Tarr, Bruce E.
Eldridge, James B. Timilty, James E.
Hedlund, Robert L. Tisei, Richard R.
Knapik, Michael R. Tucker, Susan C.
Montigny, Mark C. Walsh, Marian — 15.
Moore, Richard T.

NAYS.

Berry, Frederick E. Jehlen, Patricia D.
Brewer, Stephen M. Kennedy, Thomas P.
Buoniconti, Stephen J. McGee, Thomas M.
Candaras, Gale D. Menard, Joan M.
Chandler, Harriette L. Moore, Michael O.
Chang-Diaz, Sonia Pacheco, Marc R.
Donnelly, Kenneth J. Panagiotakos, Steven C.
Downing, Benjamin B. Petruccelli, Anthony
Fargo, Susan C. Rosenberg, Stanley C.
Flanagan, Jennifer L. Spilka, Karen E.
Galluccio, Anthony D. Tolman, Steven A. — 23.
Hart, John A., Jr.

ABSENT OR NOT VOTING.

Joyce, Brian A. — 1.

The yeas and nays having been completed at twelve minutes after five o'clock P.M., the amendment was rejected.

Messrs. Tisei, Tarr, Knapik, Hedlund, Brown and Joyce move to amend the committee bill by inserting after section 3 the following:—

“SECTION 3A. Said section 4 of said chapter 32 is hereby further amended by adding, after subdivision (o), the following subdivision:—

(o ³/₄) Notwithstanding any general or special law to the contrary, any municipal, county or state employee who receives

compensation that is less than \$5,000 annually shall not be permitted to apply creditable service as a result of service in a position paying less than \$5,000 annually which occurs on or after January 1, 2010, in order to increase his allowable retirement allowance under chapter 32.”

The question on adoption of the amendment was determined by a call of the yeas and nays at thirteen minutes past five o'clock P.M., on motion of Mr. Tisei as follows, to wit (yeas 39 — nays 0) [Yeas and Nays No. 28]:

YEAS.

Baddour, Steven A. Knapik, Michael R.
Berry, Frederick E. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
Brown, Scott P. Montigny, Mark C.
Buoniconti, Stephen J. Moore, Michael O.
Candaras, Gale D. Moore, Richard T.
Chandler, Harriette L. Morrissey, Michael W.
Chang-Diaz, Sonia O'Leary, Robert A.
Creem, Cynthia Stone Pacheco, Marc R.
Donnelly, Kenneth J. Panagiotakos, Steven C.
Downing, Benjamin B. Petrucci, Anthony
Eldridge, James B. Rosenberg, Stanley C.
Fargo, Susan C. Spilka, Karen E.
Flanagan, Jennifer L. Tarr, Bruce E.
Galluccio, Anthony D. Timilty, James E.
Hart, John A., Jr. Tisei, Richard R.
Hedlund, Robert L. Tolman, Steven A.
Jehlen, Patricia D. Tucker, Susan C.
Joyce, Brian A. Walsh, Marian — 39.
Kennedy, Thomas P.

NAYS — 0.

The yeas and nays having been completed at a quarter past five o'clock P.M., the amendment was adopted.

Messrs. Morrissey, Tisei and Tarr moved that the committee bill be amended by adding at the end thereof the following two new sections:—

“SECTION 8a. Section 10 of Chapter 32 of the General Laws, as so appearing, is hereby amended in paragraph (b) of subsection (2) by striking out the word ‘six’ in line 79 and inserting in place thereof the following word:— ten.

SECTION 8b. Section 8a shall apply to persons who initially become a member of Group 1, Group 2 or Group 4 as classified pursuant to section 3 of Chapter 32 of the General Laws, on or after the effective date of this act.”

The amendment was adopted.

Mr. Panagiotakos moved that the committee bill be amended by striking section 1, and inserting place thereof:—

SECTION 1. Section 1 of chapter 32 is hereby amended in lines 397-403 by striking out:— “Regular Compensation”, during any period subsequent to December thirty-first, nineteen hundred and forty-five, shall mean the salary, wages or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority, not including,”

And inserting in the place thereof:—

“Regular Compensation”, during any period subsequent to July first, two thousand and nine, shall mean the salary, wages or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority, not including, regardless of federal taxability, commissions, indirect, in-kind or any payments for such items as housing, lodging, travel, annuities or other retirement benefits.”;

In Section 4, by inserting after the word “units” in line 43 the following word:— “concurrently”; and

By inserting the following sections:—

“SECTION 11. Notwithstanding any special or general law to the contrary, any amount, benefit or payment included in the definition of “regular compensation”, by law or by regulation, as of June 30, 2009, and included in any applicable collective bargaining agreement or individual contract for employment in effect on June 30, 2009, shall continue to be included in the definition of compensation.

SECTION 12. Section 1 shall be effective on July 1, 2009.

SECTION 13. Except as expressly provided otherwise and notwithstanding the provisions of subdivision (5) of section 25 of chapter 32 of the General Laws, the provisions of this act shall apply to all members of retirement systems who retire after its effective date.”

The amendment was adopted.

The committee bill, as amended, was then ordered to a third reading and read a third time.

After remarks, the question on passing the committee bill to be engrossed was determined by a call of the yeas and nays at twenty-two minutes past five o'clock P.M., on motion of Mr. Tisei as follows, to wit (yeas 40 — nays 0) [Yeas and Nays No. 29]:

YEAS.

Baddour, Steven A. Knapik, Michael R.
Berry, Frederick E. McGee, Thomas M.
Brewer, Stephen M. Menard, Joan M.
Brown, Scott P. Montigny, Mark C.
Buoniconti, Stephen J. Moore, Michael O.
Candaras, Gale D. Moore, Richard T.
Chandler, Harriette L. Morrissey, Michael W.
Chang-Diaz, Sonia Murray, Therese
Creem, Cynthia Stone O'Leary, Robert A.
Donnelly, Kenneth J. Pacheco, Marc R.
Downing, Benjamin B. Panagiotakos, Steven C.
Eldridge, James B. Petruccelli, Anthony
Fargo, Susan C. Rosenberg, Stanley C.
Flanagan, Jennifer L. Spilka, Karen E.
Galluccio, Anthony D. Tarr, Bruce E.
Hart, John A., Jr. Timilty, James E.
Hedlund, Robert L. Tisei, Richard R.
Jehlen, Patricia D. Tolman, Steven A.
Joyce, Brian A. Tucker, Susan C.
Kennedy, Thomas P. Walsh, Marian — 40.

NAYS — 0.

The yeas and nays having been completed at twenty-five minutes past five o'clock P.M., the committee bill was passed to be engrossed [For the text of the bill, as amended, see Senate, No. 2026, printed as amended].

Order Adopted.

On motion of Mr. Tisei,—

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

On motion of Mr. Morrissey, at twenty-six minutes past five o'clock P.M., the Senate adjourned to meet again on Thursday next at eleven o'clock A.M.