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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, June 4, 2009.

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

Distinguished Guests.

There being no objection, the President handed the gavel to Mr. Brown for the purpose of an introduction. Mr. Brown then introduced Rick and Mary Lerner of Sherborn, their daughter, Amberlee and son, Ryan. They won the chance to be "Senators for the day" at a raffle to benefit the Pine Hill School in Sherborn.

Communication.

A communication from the Honorable Therese Murray, President of the Senate, announcing the appointment of Senator Sonia Chang-Diaz to the Charles River Water Quality Commission, pursuant to Chapter 498 of the Acts of 2008,-- **was placed on file.**

Report.

A report of the committee on Post Audit and Oversight (pursuant to Section 63 of Chapter 3 of the General Laws, as most recently amended by Chapter 557 of the Acts of 1986) submitting a report entitled: *Chapter 40: Building Accountability into the Massachusetts Affordable Housing Program* (Senate, No. 2062) (received Friday, May 29, 2009),— **was placed on file.**

Petitions

Petitions were presented and referred, as follows:

By Ms. Murray, a petition (accompanied by bill, Senate, No. 2073) of Therese Murray and Jeffrey Davis Perry (by vote of the town) for legislation to establish the Sandwich economic initiative corporation [Local approval received];

Under Senate Rule 20, to the committee on Community Development and Small Business.

By Mr. Brewer, a petition (accompanied by bill, Senate, No. 2063) of Stephen M. Brewer and Anne M. Gobi (by vote of the town) for legislation to authorize the town of Templeton to grant an additional license for the sale of all alcoholic beverages to be drunk off the premises [Local approval received];

Under Senate Rule 20, to the committee on Consumer Protection and Professional Licensure.

By the same Senator, a petition (accompanied by bill, Senate, No. 2064) of Stephen M. Brewer and Robert L. Rice, Jr. (by vote of the town) for legislation to amend the charter of the town of Winchendon [Local approval received];

By Mr. Morrissey, a petition (accompanied by bill, Senate, No. 2065) of Michael W. Morrissey, Bruce J. Ayers, Ronald Mariano and A. Stephen Tobin (with the approval of the mayor and city council) for legislation relative to MBTA billboards in the city of Quincy [Local approval received];

By Ms. Murray, a petition (accompanied by bill, Senate, No. 2074) of Therese Murray and Jeffrey Davis Perry (by vote of the town) for legislation relative to the Sandwich Visitor Services Board [Local approval received];
By the same Senator, a petition (accompanied by bill, Senate, No. 2075) of Therese Murray and Jeffrey Davis Perry (by vote of the town) for legislation relative to the lease of property at the Sandwich High School [Local approval received]; and
Severally under Senate Rule 20, to the committee on Municipalities and Regional Government.

By Mr. Brewer, a petition (accompanied by bill, Senate, No. 2066) of Stephen M. Brewer and Robert L. Rice, Jr. (by vote of the town) for legislation to authorize the town of Winchendon to continue the employment of Allen J. LaFrennie as fire chief [Local approval received]; and
By Ms. Murray, a petition (accompanied by bill, Senate, No. 2076) of Therese Murray and Jeffrey Davis Perry (by vote of the town) for legislation to exempt the office of chief of police on the town of Sandwich from the civil service law [Local approval received];
Severally under Senate Rule 20, to the committee on Public Service.
Severally sent to the House for concurrence.

The following petitions (having been presented prior to five o'clock P.M., on Friday, January 16, 2009, and having been transmitted to the Secretary of the Commonwealth under the provisions of Section 5 of Chapter 3 of the General Laws, and returned by him with memorandum relative thereto) were referred, as follows, to wit:-
Petition (accompanied by bill, Senate, No. 2071) of John A. Hart, Jr. and Brian P. Wallace for legislation relative to the Peninsula Yacht Club; and
Petition (accompanied by bill, Senate, No. 2072) of John A. Hart, Jr., Thomas M. Menino and Brian P. Wallace for legislation to authorize certain development in the Fort Point Channel;
Severally to the committee on Environment, Natural Resources and Agriculture.
Severally sent to the House for concurrence.

Petitions were presented and referred, as follows:

By Mr. Brewer (by request), a petition (subject to Joint Rule 12) of Colby Taylor for legislation relative to unmarried couples with children; and
By Mr. Pacheco, a petition (subject to Joint Rule 12) of Marc R. Pacheco and Thomas J. Calter for legislation to establish a sick leave bank for Kathleen Ginn, and employee of the Department of Mental Retardation;
Severally referred, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.

Papers from the House.

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 635) of Jennifer Benson (by vote of the town) relative to changes to the charter in the town of Lunenburg;
Petition (accompanied by bill, House, No. 1112) of James J. Dwyer and others (with the approval of the mayor and city council) relative to authorizing the city of Woburn to convey certain land;
Petition (accompanied by bill, House, No. 1121) of Timothy R. Madden and Robert A. O'Leary (by vote of the town) relative to the historic district commission of the town of Nantucket;
Petition (accompanied by bill, House, No. 1122) of Timothy R. Madden and Robert A. O'Leary (by vote of the town) relative to amending the responsibilities of the Nantucket Planning Economic Development Commission;
Petition (accompanied by bill, House, No. 1123) of Robert J. Nyman and Thomas P. Kennedy (by vote of the town) relative to establishing a town manager form of government for the town of Hanover; and
Petition (accompanied by bill, House, No. 1124) of Alice Hanlon Peisch and Susan C. Fargo (by vote of the town) relative to the establishment of an enterprise fund for the Brook School Apartments in the town of Weston.
Severally to the committee on Municipalities and Regional Government.

Petition (accompanied by bill, House, No. 636) of Christopher J. Donelan (by vote of the town) relative to special police officers in the town of Greenfield; and
Petition (accompanied by bill, House, No. 1125) of Timothy R. Madden and Robert A. O'Leary (by vote of the town) that the town of Nantucket be authorized to pay a certain amount of money to William J. Higgins, an employee of said town, for lost wages while serving on active duty.
Severally to the committee on Public Service.

Petition (accompanied by bill, House, No. 1126) of Timothy R. Madden and Robert A. O'Leary (by vote of the town) relative to exempting the Harbor and Shellfish Advisory Board membership of the town of Nantucket from conflict of interest regarding discussion of shellfish licensing;
To the committee on State Administration and Regulatory Oversight.

Petition (accompanied by bill, House, No. 637) of Christopher J. Speranzo and Benjamin B. Downing (with the approval of the mayor and city council) relative to authorizing the city of Pittsfield to prohibit heavy commercial vehicles from Merriam Street

and South Merriam Street in said city;
To the committee on Transportation.

Bills

Making appropriations for the fiscal year 2009 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 4125, amended,- on House, No. 4109, in part); and
Regarding accountability of public utility companies (House, No. 4126, amended,- on House, No. 4110).
Were severally read and, under Senate Rule 27, referred to the committee on Ways and Means.

Reports

Of the committee on Children, Families and Persons with Disabilities, asking to be discharged from further consideration
Of the petition (accompanied by bill, House, No. 181) of John W. Scibak and others relative to the licensure of 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. 59) of Mark C. Montigny, Susan C. Tucker, Thomas P. Kennedy, Brian A. Joyce and other members of the General Court for legislation to assist families care for elders,-- and recommending that the same be referred to the committee on Elder Affairs;

Of the petition (accompanied by bill, Senate, No. 31) of Harriette L. Chandler, John W. Scibak, Patricia D. Jehlen, Susan C. Tucker and other members of the General Court for legislation relative to equitable reimbursement rates for services provided to publicly assisted patients;

Of the petition (accompanied by bill, Senate, No. 39) of Jennifer L. Flanagan, James B. Eldridge, Benjamin B. Downing, Christine E. Canavan and other members of the General Court for legislation to ensure continuity of health coverage for children;
Of the petition (accompanied by bill, House, No. 188) of Christine E. Canavan and others relative to the continuation of eligibility for medical benefits for certain children;

And recommending that the same severally be referred to the committee on Health Care Financing;

Of the committee on Revenue, asking to be discharged from further consideration of the petition (accompanied by bill House , No. 2737) of John V. Fernandes and others relative to the calculation of income for spouses of nursing home residents,-- **and recommending that the same be referred to the committee on Elder Affairs;**
Were severally considered forthwith, under Senate Rule 36, and accepted, in concurrence.

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 twenty-three 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.

Resolutions.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:-
Resolutions (filed by Mr. Pacheco) "congratulating Viva Arlene Turner on her one hundredth birthday"; and
Resolutions (filed by Mr. Rosenberg) "commending the First Annual Massachusetts Nonprofit Awareness Day."

Report of a Committee.

By Mr. Panagiotakos, for the committee on Ways and Means, that the House Bill making appropriations for the fiscal year 2009 to provide for supplementing certain existing appropriations and for certain other activities and projects (House, No. 4125, amended),-- **ought to pass, with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2069.**

There being no objection, the rules were suspended, on motion of Mr. Michael O. Moore, and the bill was read a second time.

After remarks, and pending the main question on ordering the bill to a third reading, Mr. Morrissey moved to amend the proposed new text in section 56, by striking out in line 379 the word "funds." and inserting in place thereof the following:- "funds; and provided further the same ought to apply to line item 0526-0114."

After debate, the amendment was *rejected*.

Ms. Chandler moved to amend the proposed new text in section 2A, in item 1599-1701, in line 1, by inserting after the word "costs" the following words: "to certain municipalities and municipal lighting plants as".

The amendment was adopted.

Messrs. Morrissey and Montigny moved that proposed new text be amended by adding at the end thereof the following new section:-

“SECTION X. The \$7,500,000 received by the Commonwealth for disproportionate share hospitals pursuant to the American Recovery and Reinvestment Act of 2009 (‘ARRA’) shall be appropriated to the Medical Security Trust Fund. The Office of the Executive Office of Health and Human Services shall distribute \$15,000,000, consistent with ARRA to certain disproportionate share hospitals, as defined by 114.1 CMR 36.04 and M.G.L. 118G §1, that provide the largest volume of uncompensated care in the Commonwealth, as determined by the Division of Health Care Finance and Policy and had no controlling interest in any managed care organization under contract with MassHealth as of January 1, 2009, in an amount equal to the difference between the costs incurred by such hospital for the provision of services to publicly insured or uninsured individuals including Masshealth, Medicare, Commonwealth Care, and the Health Safety Net Trust Fund (‘Uncompensated Public Care’) and the payments received for such services; and provided further, that hospitals that have in-patient psychiatric units which said psychiatric units had negative operating margins in FY08, adjusted to exclude any grants awarded from the Essential Community Provider Trust Fund shall receive priority in the distribution of such supplemental payment amounts under this section; and provided further, that any remaining amounts not otherwise distributed in accordance with this section shall be distributed equitably among the remaining facilities, in proportion to the relative amount of Uncompensated Public Care costs incurred by each facility.”

After debate, the amendment was *rejected*, by a vote of 12 to 15.

Messrs. Tarr, Tisei, Knapik, Hedlund, and Brown moved to amend the proposed new text by adding at the end the following new section:-

“SECTION XX. Notwithstanding any general or special law to the contrary, the Commonwealth Connector, as established in Chapter 58 of the acts of 2006, shall reevaluate its requirements for minimum creditable coverage for health insurance, so as to determine the most effective means for making available to the citizens of the Commonwealth health insurance plans with reduced premium costs from those presently offered. In its reevaluation the agency shall consider but not be limited to the elimination of mandated coverage such as those for prescription drugs in one or more available plans, the increased utilization of mechanisms such as medical savings accounts, increased deductible levels and small business health purchasing cooperatives, and increased tax benefits for purchasing and maintaining creditable coverage.

Upon the completion of said reevaluation the agency shall develop a plan to employ one or more methods to reduce the cost of at least one available plan providing creditable coverage for each class of insured, and submit such plan to the clerks of the House and Senate not more than six months following the passage of this act, and shall implement said plan not later than ninety days following that filing.”

The amendment was *rejected*.

Mr. Hart moved that the proposed new text be amended in section 55 by striking out the figure “\$65,000,000” and inserting in place thereof the following figure:-“\$50,000,000”.

The amendment was *rejected*.

Ms. Tucker, Ms. Chandler and Mr. Montigny moved to amend the proposed new text by inserting after section _____, the following new section:

“SECTION _____. Section 6J of chapter 62 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after subsection (c)(2) the following:-

(3) Nothing in this section shall prevent a completed or certified project that has been placed into service from remaining eligible for further historic rehabilitation tax credit allocations; provided that the completed project has not received previous allocations that exceed 20 percent of the qualified rehabilitation expenditures; provided further, that notwithstanding any general or special law, rule or regulation to the contrary, projects that received final certification prior to January 1, 2009, which were subsequently deemed ineligible for a historic rehabilitation tax credit allocation shall be issued said credits forthwith.

Section 38R of chapter 63, as so appearing, is hereby amended by inserting after (c)(2) the following:-

(3) Nothing in this section shall prevent a completed or certified project that has been placed into service from remaining eligible for further historic rehabilitation tax credit allocations; provided that the completed project has not received previous allocations that exceed 20 percent of the qualified rehabilitation expenditures; provided further, that notwithstanding any general or special law, rule or regulation to the contrary, projects that received final certification prior to January 1, 2009, which were subsequently deemed ineligible for a historic rehabilitation tax credit allocation shall be issued said credits forthwith.”

After debate, the amendment was *rejected*.

Messrs. Tisei and Montigny moved to amend the proposed new text by inserting, after section ___, the following new section:-

“SECTION _____. Notwithstanding any special or general law to the contrary, there shall hereby be established a court consolidation and efficiency commission. The commission shall consider what, if any, courts of the commonwealth can be consolidated, eliminated or expanded so that justice may be more efficiently served to the citizens of the commonwealth. Not later than February 1, 2010 the commission shall issue its recommendations along with any draft legislation necessary to implement said recommendations. The commission shall consist of the chief justice of the supreme judicial court, or her designee, who shall also serve as co-chair; the secretary of administration and finance, or her designee, who shall also serve as co-chair; the chief justice of the appeals court, or his designee; the chief justice for administration and management of the trial court, or his designee; the

chief justice of the probate court, or his designee; the chief justice of the juvenile court, or his designee; two persons to be appointed by the president of the senate; one person to be appointed by the minority leader of the senate; two persons to be appointed by the speaker of the house of representatives; one person to be appointed by the minority leader of the house of representatives; and three persons to be appointed by the governor.

The plan for reorganization filed by the commission shall have the effect of a reorganization plan filed by the governor under article XXV of the constitution of the commonwealth and shall be referred to an appropriate committee, to be determined by the clerks of the senate and the house of representatives, with the approval of the president and speaker, which committee shall not later than thirty days after the date of the commission's presentation of said plan hold a public hearing thereon and shall not later than ten days after such hearing report that it approves or disapproves such plan and such reorganization plan shall have the force of law upon expiration of the sixty calendar days next following its presentation by the governor to the general court, unless disapproved by a majority vote of the members of either of the two branches of the general court present and voting, the general court not having been prorogued within such sixty days.

After its presentation by the commission to the general court, no such reorganization plan shall be subject to amendment by the general court."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at twenty-six minutes before four o'clock P.M., on motion of Mr. Tisei, as follows, to wit (yeas 11 – nays 22) [**Yeas and Nays No. 77**]:

INSERT ROLL CALL "[A]"

The yeas and nays having been completed at twenty-two minutes before four o'clock P.M., the amendment was *rejected*.

Messrs. Tisei and Montigny moved to amend the proposed new text in section 2A, by striking out item 1599-1031 and inserting in place thereof the following item:-

"1599-1031 For a reserve to meet costs identified by the department of public health associated with responding to an outbreak of the H1N1 virus; provided, that funds may be expended on staffing costs within the state laboratory, dissemination of public information, antiviral medication for the treatment or prevention of the H1N1 virus and the purchase of laboratory equipment specific for the testing for the H1N1 virus; provided further, that funds from this item shall not be expended on salaries or contracts for personnel hired by the department of public health on or after April 15, 2009; provided further, that the secretary of health and human services shall submit a spending plan to the executive office for administration and finance and the house and senate ways and means committees before the disbursement of funds from this reserve; and provided further, that the department of public health and the executive office for health and human services shall seek federal reimbursement for any eligible expenditures from this reserve.....\$2,845,216".

After remarks, the amendment was adopted.

Messrs. Tisei and Montigny moved to amend the proposed new text by inserting after section __, the following new section:-

"SECTION __. Notwithstanding any general or special law to the contrary, the Secretary of Administration and Finance shall pursue any and all opportunities for the sponsorship or naming of state assets and facilities for compensation that the Secretary deems appropriate and that is not otherwise prohibited by law. To this end the Secretary shall issue request for proposals not later than September 1, 2009 and as often as the Secretary deems necessary thereafter. Not later than January 1, 2010 the Secretary shall file reports with the House Committees on Ways and Means and the Senate Committee on Ways and Means detailing proceeds generated through sponsorships or naming rights and the details of any contracts entered into for such purposes."

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays at six minutes before four o'clock P.M., on motion of Mr. Tisei, as follows, to wit (yeas 36 – nays 3) [**Yeas and Nays No. 78**]:

INSERT ROLL CALL "[B]"

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

The Ways and Means amendment, as amended, was then considered; and it was adopted.

The bill was then ordered to a third reading and read a third time.

Mr. Brewer in the Chair (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair), after debate, the question on passing the bill to be engrossed, in concurrence, with the amendment, was determined by a call of the yeas and nays, at twenty minutes before five o'clock P.M., on motion of Mr. Panagiotakos, as follows, to wit (yeas 34 – nays 5) [**Roll Call No. 79**]:

INSERT ROLL CALL "[C]"

The yeas and nays having been completed at seventeen minutes before five o'clock P.M., the bill was passed to be engrossed, in concurrence, with the amendment [For the text of the Senate amendment, see Senate, No. 2070].

Paper From the House.

Engrossed Bill—Land Taking for Conservation Etc.

An engrossed Bill authorizing the Department of Fish and Game to acquire conservation restrictions in and to lands owned by the city of Fitchburg (see House, No. 3848) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage,— was put upon its final passage; and, this being a bill providing for the taking of land of other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution, the question on passing it to be enacted was determined by a call of the yeas and nays, at sixteen minutes before five o'clock P.M., as follows, to wit (yeas 38 - nays 0) **[Yeas and Nays No. 80]:**

INSERT ROLL CALL ["D"]

The yeas and nays having been completed at eleven minutes before five o'clock P.M., the bill was passed to be enacted, two thirds of the members present having agreed to pass the same, and it was signed by the Acting President (Mr. Brewer) and laid before the Governor for his approbation.

Report of Committees.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Stephen J. Buoniconti for legislation to establish a sick leave bank for Margaret Ann Sheehan, an employee of the Trial Court.

The rules were suspended, on motion of Mr. Tolman, and the report was considered forthwith; Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on the Judiciary.

*Paper From the House.
Engrossed Bill.*

An engrossed Bill relative to betterments in the town of Dracut (see House, No. 3833) (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. Brewer) and laid before the Governor for his approbation.**

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.

Adjournment in Memory of David M. Swartz

The Senator from Essex, Mr. Baddour, requested that when the Senate adjourns today, it adjourn in memory of former Representative and Essex County Prosecutor David M. Swartz, who passed away on June 1, 2009.

David Swartz was a graduate of the former St. James High School in Haverhill, who continued on to receive a BA from Providence College in 1952 and earned his JD at Harvard Law School in 1955, having scored a perfect score in the first of Harvard's entrance exams.

A lifelong resident of Haverhill, David spent nearly his entire professional career in civil service beginning in 1975 with two terms as a Massachusetts State Representative and 24 years as a prosecutor with the Essex County District Attorney's office. His associations were numerous, and his reach into the city of Haverhill was vast. David was a member of both the Haverhill and Merrimac Historic committees as well as the Haverhill Zoning Board of Appeals. He also proudly served as a member of the Democratic City and Ward 4 committees. He also served a term as a Haverhill City Councillor. The most recent recognition to his commitment was the awarding of the Justice William Moody Award.

David was equally dedicated to his family, and is survived by his wife Suzanne E. (Faxon) Swartz and her two children, Robyne and her husband, Ronald Uliano of Atkinson, New Hampshire and Barry Lavoie of Haverhill. David leaves his six children deeply saddened yet grateful for his love and equally prepared to contribute to life as he did. They include Rebecca and her husband James Kennedy of Medford, Stephany and her husband Stephen Kern of Westerly, Rhode Island, Christopher and his wife Sylvia Swartz of East Hampstead, New Hampshire, Deborah Roberts of Grapevine, Ark., Sheryl and her husband Christopher Chalmers of East Hampstead, New Hampshire and Rachel and her husband Stephen McClary of Framingham. David also leaves behind his brother, Dennis and his wife Elaine Swartz of Williamsburg, Virginia. His legacy will continue to live on in his eleven grandchildren and four great grandchildren. David will be joining Nancy Swartz, his first wife of 11 years as well as his grandson, Lance Corporal, Nickolas Schiavoni, USMC who was killed in action in Iraq in 2005.

Accordingly, as a mark of respect to the memory of David J. Swartz, at seven minutes before five o'clock P.M., on motion of Mr. Tisei, the Senate adjourned to meet again Monday next at eleven o'clock A.M.